

<p>1        DONDERO - 10/29/21</p> <p>2 installment payment that was due at the end of</p> <p>3 2020; correct?</p> <p>4        MS. DEITSCH-PEREZ: Object to – are</p> <p>5 you still talking – have you left HCRE?</p> <p>6        MR. MORRIS: No. I said what I</p> <p>7 meant to. So we can take down the exhibit</p> <p>8 if that's the part that is confusing you.</p> <p>9 I appreciate that.</p> <p>10      MS. DEITSCH-PEREZ: Okay.</p> <p>11      Q. Okay. NexPoint didn't make the</p> <p>12 installment payment that was due at the end of</p> <p>13 2020; correct?</p> <p>14      MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16      A. Yeah. I mean, I think maybe the</p> <p>17 right way to describe it is Highland or –</p> <p>18 yeah, Highland or Frank Waterhouse on behalf of</p> <p>19 NexPoint didn't make the payment.</p> <p>20      Q. Okay. And HCRE didn't make the</p> <p>21 installment payment that was due at the end of</p> <p>22 2020; correct?</p> <p>23      A. I don't – I guess – okay, if they</p> <p>24 missed it too, I – I did not have specific</p> <p>25 awareness to that, I guess, but if you are</p>	Page 456	<p>1        DONDERO - 10/29/21</p> <p>2 suing under it, I guess they did.</p> <p>3        Q. Right. And HCMS didn't make the</p> <p>4 payment that was due at the end of the year, to</p> <p>5 the best of your knowledge; correct?</p> <p>6        MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8        A. Yeah. I mean, what I'd just</p> <p>9 separate in my notes here is the HCMFA was just</p> <p>10 not – it wasn't a bona fide note, I guess,</p> <p>11 is – that is – which I guess is a</p> <p>12 different – a different conversation.</p> <p>13      Q. Yeah. Do you understand that the</p> <p>14 question was about HCMS? Let me restate the</p> <p>15 question.</p> <p>16      MS. DEITSCH-PEREZ: Yes.</p> <p>17      Q. HCMS –</p> <p>18      A. Oh, I'm sorry.</p> <p>19      MS. DEITSCH-PEREZ: John, I'm sorry,</p> <p>20 it is really hard on the video to</p> <p>21 distinguish between HCMF and HCMS, so if</p> <p>22 you could just –</p> <p>23      A. How about just say Services for</p> <p>24 Highland Capital Management Services, just</p> <p>25 say – instead of S, just say Services.</p>	Page 457
<p>1        DONDERO - 10/29/21</p> <p>2      Q. Sure. All right. So from now on, I</p> <p>3 will try and use the word "Services" and you</p> <p>4 will know that that means Highland Management</p> <p>5 Services, Inc.; is that fair?</p> <p>6      A. Yes, okay.</p> <p>7      Q. Okay. So Services didn't make the</p> <p>8 installment payment that was due at year-end;</p> <p>9 correct?</p> <p>10     A. Yes.</p> <p>11     Q. Okay. And I just want to make sure</p> <p>12 that I have this right. Is it – is it the</p> <p>13 corporate obligors' – those three corporate</p> <p>14 obligors' contention that one of the reasons</p> <p>15 they didn't make the payments at the end of the</p> <p>16 year is that they were relying on Highland to</p> <p>17 make the payment for them?</p> <p>18     A. Absolutely.</p> <p>19     Q. Okay.</p> <p>20     A. It was due course de minimis, and</p> <p>21 those entities didn't have a single employee or</p> <p>22 capable financial person other than the people</p> <p>23 at Highland that were doing the shared services</p> <p>24 for them.</p> <p>25     Q. NexPoint didn't have any employees</p>	Page 458	<p>1        DONDERO - 10/29/21</p> <p>2 in December 2020. Is that your testimony?</p> <p>3      A. I was thinking about HCRE and</p> <p>4 Services had zero employees. NexPoint had</p> <p>5 employees but none that were involved in basic</p> <p>6 accounting functions.</p> <p>7      Q. Okay. And – and there are people,</p> <p>8 including yourself, who were officers or</p> <p>9 employees of NexPoint in December 2020;</p> <p>10 correct?</p> <p>11     A. Yes.</p> <p>12     Q. And HCRE had officers in December</p> <p>13 2020, including you; correct?</p> <p>14     A. Yes. Officers, yes.</p> <p>15     Q. And Services had officers in</p> <p>16 December 2020, including you; correct?</p> <p>17     A. Yes.</p> <p>18     Q. Okay. I think in summary form, to</p> <p>19 be fair, I think we have identified one of the</p> <p>20 defenses for these three corporate obligors.</p> <p>21     Two of them have the defense of</p> <p>22 prepayment; right?</p> <p>23     A. Yes.</p> <p>24     Q. And one of them is NexPoint,</p> <p>25 NexPoint has the defense of prepayment.</p>	Page 459

<p>1        DONDERO - 10/29/21</p> <p>2        Do you have that – do I have that</p> <p>3 right?</p> <p>4        A. Yes.</p> <p>5        Q. Which of the other two, remind me?</p> <p>6        A. Services.</p> <p>7        Q. Okay. So NexPoint and Services have</p> <p>8 the defense of prepayment. Are there any other</p> <p>9 reasons that you know of that these three</p> <p>10 corporate obligors didn't make the annual</p> <p>11 installment payment that was due at the end of</p> <p>12 the year?</p> <p>13        MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15        A. Again, they – they should have been</p> <p>16 in regular course. Those payments – using the</p> <p>17 word "payment" is almost like an overstatement</p> <p>18 of the significance or the amount. If the</p> <p>19 amounts were small in all cases, they should</p> <p>20 have been made or they should have been paid,</p> <p>21 even in the context of contention and even in</p> <p>22 the context of the larger amounts of money that</p> <p>23 Highland owed us.</p> <p>24        Q. I'm just – I'm just asking a pretty</p> <p>25 simple question, sir. I don't mean to be</p>	Page 460	<p>1        DONDERO - 10/29/21</p> <p>2 contentious with you. We have identified one</p> <p>3 defense that these corporate obligors contends</p> <p>4 exists; and that is, Highland was supposed to</p> <p>5 make the payment. Fair?</p> <p>6        A. Yes.</p> <p>7        Q. And then we have identified a second</p> <p>8 defense for NexPoint and HCMS, and that is</p> <p>9 their defense that they prepaid.</p> <p>10        Do I have that generally right?</p> <p>11        A. Yes.</p> <p>12        Q. Can you describe for me any other</p> <p>13 defenses that these three corporate obligors</p> <p>14 have for not making the payment that was due at</p> <p>15 the end of the year?</p> <p>16        MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18        A. I'm thinking. Not at the moment.</p> <p>19        Q. Okay. Did you instruct anyone in</p> <p>20 December of 2020 to make the installment</p> <p>21 payments that were due on December 31st under</p> <p>22 these three term notes?</p> <p>23        MS. DEITSCH-PEREZ: Object to the</p> <p>24 form, asked and answered.</p> <p>25        A. No.</p>	Page 461
<p>1        DONDERO - 10/29/21</p> <p>2        Q. Okay. Did you take any steps to</p> <p>3 confirm that Highland would make the payments</p> <p>4 that were due under these three term notes at</p> <p>5 the end of the year?</p> <p>6        MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8        A. No. I testified already the first I</p> <p>9 heard about it was a week or two later. And I</p> <p>10 called up Frank and confirmed with him to make</p> <p>11 sure they got paid and make sure they were back</p> <p>12 in compliance.</p> <p>13        Q. Okay.</p> <p>14        MR. MORRIS: I move to strike</p> <p>15 everything after the word "no."</p> <p>16        Q. Do you know whether anybody on</p> <p>17 behalf of any of the three corporate obligors</p> <p>18 under the term notes ever directed Highland to</p> <p>19 make the payments under them at the end of the</p> <p>20 year?</p> <p>21        MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23        A. Not before the end of the year, no.</p> <p>24        Q. Okay. And do you know whether</p> <p>25 anybody acting on behalf of any of the three</p>	Page 462	<p>1        DONDERO - 10/29/21</p> <p>2 corporate obligors under the term notes ever</p> <p>3 took any steps in December 2020 to make sure</p> <p>4 that Highland would, in fact, make the payments</p> <p>5 that were due at year-end?</p> <p>6        MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8        A. No, there was a reliance on</p> <p>9 Highland.</p> <p>10        Q. Okay. Is it your testimony that</p> <p>11 Highland was authorized to make the payments</p> <p>12 under the notes at year-end without being</p> <p>13 directed by a representative of the three</p> <p>14 corporate obligors?</p> <p>15        A. Yes. It is my contention that that</p> <p>16 is how it worked in prior years also.</p> <p>17        Q. And so you believe that nobody on</p> <p>18 behalf of any of the corporate obligors ever</p> <p>19 authorized or directed Highland to make the</p> <p>20 payments but that Highland did it without –</p> <p>21 without direction?</p> <p>22        MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24        A. Yes, typically. And in 2017 or</p> <p>25 2018, 2019, for sure.</p>	Page 463

<p>1        DONDERO - 10/29/21</p> <p>2        Q. Okay. We have looked at one – at</p> <p>3        one December 3rd letter. I mean, do you</p> <p>4        remember that you also received a number of</p> <p>5        letters on December 3rd demanding payment on</p> <p>6        certain promissory notes?</p> <p>7        A. No.</p> <p>8        Q. All right.</p> <p>9        MR. MORRIS: Can we call up</p> <p>10      Exhibit 2, please. No, I apologize. Not</p> <p>11      Exhibit 2, Exhibit 4.</p> <p>12      (Exhibit 4 marked.)</p> <p>13      MS. DEITSCH-PEREZ: Exhibit 4 in the</p> <p>14      notebook?</p> <p>15      MR. MORRIS: Yes, ma'am.</p> <p>16      Okay. And now let's – let's go to</p> <p>17      the exhibits. Exhibit 2, Exhibit 3,</p> <p>18      Exhibit 4, Exhibit 5.</p> <p>19      Q. Do you see, sir, that this is a</p> <p>20      letter addressed to you on behalf of HCRE</p> <p>21      Partners that is also dated December 3rd, 2020?</p> <p>22      A. Yes.</p> <p>23      Q. Does that refresh your recollection</p> <p>24      that you also received notices, demand notices</p> <p>25      on or around December 3rd, 2020, with respect</p>	Page 464	Page 465
<p>1        DONDERO - 10/29/21</p> <p>2        form.</p> <p>3        A. HCMFA or Services?</p> <p>4        Q. HCMFA?</p> <p>5        A. I – I don't know. I don't have any</p> <p>6        knowledge.</p> <p>7        MR. MORRIS: Can we put up</p> <p>8        Exhibit 1, please.</p> <p>9        (Exhibit 1 marked.)</p> <p>10      MR. MORRIS: We probably want to go</p> <p>11      to Exhibit 3 of that document.</p> <p>12      Q. This one was sent to Mr. Waterhouse.</p> <p>13      Do you see that?</p> <p>14      A. Yes.</p> <p>15      Q. Okay. And did you become aware on</p> <p>16      or around December 3rd, 2020, that Highland</p> <p>17      made demand under the two notes listed in this</p> <p>18      letter?</p> <p>19      A. Yes. Why would this one go to</p> <p>20      Frank Waterhouse?</p> <p>21      Q. Was he the treasurer – was he the</p> <p>22      treasurer of Highland Capital Management Fund</p> <p>23      Advisors at the time?</p> <p>24      A. Right.</p> <p>25      Q. So does it make sense that the payee</p>	Page 466	Page 467

<p>1        DONDERO - 10/29/21</p> <p>2 other issues or it wasn't things that we</p> <p>3 thought were legitimate as part of the overall</p> <p>4 settlement.</p> <p>5        You've got to remember we didn't</p> <p>6 realize Seery betrayed the estate at this</p> <p>7 point. We thought we were moving towards, you</p> <p>8 know, resolution or a pot plan.</p> <p>9        Q. Okay.</p> <p>10      MR. MORRIS: I move to strike.</p> <p>11      Q. And please listen carefully to my</p> <p>12 question.</p> <p>13      Did you have any knowledge in early</p> <p>14 December 2020 that Highland made demand for</p> <p>15 payment under demand notes that were issued by</p> <p>16 you and certain of your affiliates?</p> <p>17      A. Same answer.</p> <p>18      Q. Were you aware or you were not</p> <p>19 aware?</p> <p>20      A. Well, no specific knowledge for the</p> <p>21 reasons articulated in the answer that you –</p> <p>22 you moved to strike.</p> <p>23      Q. Okay. So – so you had – you had</p> <p>24 no particularized knowledge of the demands in</p> <p>25 December 2020; correct?</p>	Page 468	Page 469
<p>1        DONDERO - 10/29/21</p> <p>2 these are frivolous obligations, does it?</p> <p>3        MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5        A. PricewaterhouseCoopers doesn't –</p> <p>6        Q. PricewaterhouseCoopers specifically</p> <p>7 included a disclosure of all of these</p> <p>8 promissory notes in the audited financial</p> <p>9 statements; correct?</p> <p>10      MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12      A. I mean, as they should have with the</p> <p>13 information they had at the time, but I think</p> <p>14 what has come out since then is that they – it</p> <p>15 was moneys that moved from Highland to HFAM for</p> <p>16 things that were caused by Highland and people,</p> <p>17 not me, not even Frank, I think, but other</p> <p>18 people assumed it was a note and made notes out</p> <p>19 of it. And that is what PricewaterhouseCoopers</p> <p>20 put into the financials, but I think what</p> <p>21 everybody acknowledges is that they were</p> <p>22 never – they were never notes.</p> <p>23      Q. Is there a document that you have</p> <p>24 ever seen in your life that supports what you</p> <p>25 just said?</p>	Page 470	Page 471

<p>1        DONDERO - 10/29/21</p> <p>2    between the different players in the entities.</p> <p>3    They would have said what they thought the</p> <p>4    breaches were overall in their letter, and what</p> <p>5    would govern the split is the shared services</p> <p>6    agreement and where were the employees that</p> <p>7    performed the activities that they cited.</p> <p>8    Q. Okay. We will get to that at a</p> <p>9    later time.</p> <p>10    All right. Let's go back to the</p> <p>11    oral agreements that you entered into with the</p> <p>12    Dugaboy trustee.</p> <p>13    MR. MORRIS: And let's start by</p> <p>14    putting back up Exhibit 31, Paragraph 82.</p> <p>15    MS. JEFFRIES: I'm sorry, can you</p> <p>16    repeat that?</p> <p>17    MR. MORRIS: Yes. Exhibit 31,</p> <p>18    Paragraph 82, yes.</p> <p>19    Q. And, again, Mr. Dondero, I think you</p> <p>20    have testified already that you believe</p> <p>21    Paragraph 82 generally describes the oral</p> <p>22    agreement that you entered into with the</p> <p>23    Dugaboy trustee with respect to the promissory</p> <p>24    notes that we've described; right?</p> <p>25    A. Yes.</p>	Page 472	<p>1        DONDERO - 10/29/21</p> <p>2    Q. And – and it is – and that</p> <p>3    includes the promissory notes that you signed</p> <p>4    that Highland is suing on as well as the</p> <p>5    promissory notes that HCRE, HCMS, and NexPoint</p> <p>6    signed that Highland is suing on; correct?</p> <p>7    A. Yes.</p> <p>8    Q. Okay. Do you contend that the oral</p> <p>9    agreements that you entered into with the</p> <p>10    Dugaboy trustee modified the parties' rights</p> <p>11    under the original promissory notes?</p> <p>12    MS. DEITSCH-PEREZ: Object to the</p> <p>13    form.</p> <p>14    A. Modify, boy, sounds like a legal</p> <p>15    term. It said conditions by which they could</p> <p>16    be forgiven.</p> <p>17    Q. And there were no such conditions in</p> <p>18    the original notes; right?</p> <p>19    A. That is correct.</p> <p>20    Q. Okay. So I'm just asking you from</p> <p>21    your perspective whether the oral agreements</p> <p>22    that you entered into with the Dugaboy trustee</p> <p>23    were intended to modify the parties' rights and</p> <p>24    obligations under the original promissory</p> <p>25    notes.</p>	Page 473
<p>1        DONDERO - 10/29/21</p> <p>2    MS. DEITSCH-PEREZ: Object to the</p> <p>3    form.</p> <p>4    A. It was meant to condition the</p> <p>5    forgiveness.</p> <p>6    Q. Did it change –</p> <p>7    A. I would like to use those words</p> <p>8    versus modified the agreement.</p> <p>9    Q. Did it – did it alter the parties'</p> <p>10    rights and obligations?</p> <p>11    MS. DEITSCH-PEREZ: Object to the</p> <p>12    form.</p> <p>13    Q. I'm not trying to play a game with</p> <p>14    you. I just –</p> <p>15    MS. DEITSCH-PEREZ: That is exactly</p> <p>16    what you are doing. Why don't you just ask</p> <p>17    him –</p> <p>18    MR. MORRIS: Please stop talking.</p> <p>19    Please stop talking.</p> <p>20    Q. Mr. Dondero, is it fair to say that</p> <p>21    the promissory notes that are the subject of</p> <p>22    your oral agreements with the Dugaboy –</p> <p>23    Dugaboy trustee set forth the parties' rights</p> <p>24    and obligations thereunder, both the maker and</p> <p>25    the payee?</p>	Page 474	<p>1        DONDERO - 10/29/21</p> <p>2    MS. DEITSCH-PEREZ: Can you read</p> <p>3    that back again.</p> <p>4    Q. Is it fair to say that the original</p> <p>5    promissory notes that are the subject of the</p> <p>6    oral agreements between you and the Dugaboy –</p> <p>7    withdrawn.</p> <p>8    Is it fair to say that the original</p> <p>9    promissory notes that Highland is suing under</p> <p>10    set forth the maker and the payees' rights and</p> <p>11    obligations under those notes?</p> <p>12    MS. DEITSCH-PEREZ: Object to the</p> <p>13    form. Object to the form.</p> <p>14    A. Yeah, I – again, I want to – I</p> <p>15    want to avoid using the term "modification" or</p> <p>16    implying modification because, again, the notes</p> <p>17    are soft, and they really just talk about a</p> <p>18    rate and/or payment or amortizations, but</p> <p>19    they're soft notes. Something in the agreement</p> <p>20    that lays out the conditions for forgiveness</p> <p>21    aren't necessarily a modification of the note,</p> <p>22    and I'd like that to be –</p> <p>23    Q. Let me –</p> <p>24    A. – my testimony.</p> <p>25    Q. Let me ask it this way: Under each</p>	Page 475

<p>1        DONDERO - 10/29/21</p> <p>2 of the demand notes, Highland as the payee had</p> <p>3 the unfettered right to demand payment at any</p> <p>4 time; correct? Did you understand that?</p> <p>5        MS. DEITSCH-PEREZ: At the time that</p> <p>6 the notes were first signed?</p> <p>7        MR. MORRIS: Yes, ma'am.</p> <p>8        A. Yeah. I mean, at the – at the time</p> <p>9 that they were first put in place, but by the</p> <p>10 time the demand was made, they had already been</p> <p>11 subject to the conditions present or the</p> <p>12 conditions for forgiveness.</p> <p>13        Q. Okay. So this is exactly what I'm</p> <p>14 trying to get at. At the time the notes were</p> <p>15 signed, Highland had the right to make demand</p> <p>16 for payment at any time; correct?</p> <p>17        A. Yes.</p> <p>18        Q. And when you entered into the oral</p> <p>19 agreements with the Dugaboy trustee, Highland's</p> <p>20 right to make a demand – pick your word,</p> <p>21 modified, altered, amended, changed – it</p> <p>22 was – your oral agreement had an impact on</p> <p>23 Highland's rights under the promissory notes;</p> <p>24 correct?</p> <p>25        MS. DEITSCH-PEREZ: Object to form</p>	Page 476	Page 477
<p>1        DONDERO - 10/29/21</p> <p>2 loans that were the subject of the promissory</p> <p>3 notes; correct?</p> <p>4        A. Yeah, I – I – I am just not</p> <p>5 understanding the nuance enough to answer that</p> <p>6 question.</p> <p>7        Q. Did the oral agreements relate to</p> <p>8 the loans that were the subject of the</p> <p>9 promissory notes?</p> <p>10        A. The oral agreements affected the</p> <p>11 term loans and the demand notes.</p> <p>12        Q. Okay.</p> <p>13        A. Does that answer your question?</p> <p>14        Q. And so – and so is it fair to say</p> <p>15 that the oral agreements related to – to</p> <p>16 the – to the – to the loans that were the</p> <p>17 subject of the notes?</p> <p>18        A. I don't know.</p> <p>19        Q. Okay.</p> <p>20        A. I'm not – I'm not sure what you are</p> <p>21 asking, but I don't know the answer.</p> <p>22        Q. Okay. It is your –</p> <p>23        MS. DEITSCH-PEREZ: John, just</p> <p>24 how – I just think the witness is lagging</p> <p>25 a little. So how much longer do you think</p>	Page 478	Page 479





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## **EXHIBIT 99**

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 In re: :  
5 : Chapter 11  
6 : Case No.  
7 HIGHLAND CAPITAL MANAGEMENT, : 19-34054-sgj11  
8 L.P. :  
9 Debtor. :  
-----

10 :  
11 HIGHLAND CAPITAL MANAGEMENT, :  
12 L.P. :  
13 :  
14 Plaintiff, :  
15 :  
16 vs. : Adversary  
17 : Proceeding No.  
18 NEXPOINT ADVISORS, L.P., : 21-03005-sgj  
19 JAMES DONDERO, NANCY DONDERO, :  
20 AND THE DUGABOY INVESTMENT :  
21 TRUST, :  
22 :  
23 Defendants. :  
24 -----

25 REMOTE VIDEO DEPOSITION OF JAMES DONDERO

19 VOLUME III

20 Thursday, November 4, 2021

21  
22  
23  
24  
25 JOB NO. 202288

1 2 3 4 November 4, 2021 5 1:17 p.m. CDT 6 7 8 Remote video deposition of JAMES 9 DONDERO taken in the above-entitled matter 10 before Suzanne J. Stoltz, a Certified Shorthand 11 Reporter, Certified Realtime Reporter, 12 Registered Professional Reporter, and Notary 13 Public of the State of Texas, on Thursday, 14 November 4, 2021, commencing at 1:17 p.m. CDT. 15 16 17 18 19 20 21 22 23 24 25	Page 2	1 APPEARANCES: 2 3 Attorneys for Highland Capital Management L.P.: 4 (Via videoconference) PACHULSKI STANG ZIEHL & JONES 5 780 Third Avenue 6 New York, New York 10017 7 BY: JOHN MORRIS, ESQ. 8 HAYLEY WINOGRAD, ESQ. 9 10 Attorneys for NexPoint Advisors, L.P.: 11 (Via videoconference) MUNSCH HARDT KOPF & HARR 12 500 North Akard Street Dallas, Texas 75201 13 14 BY: THOMAS BERGHMAN, ESQ. 15 16 Attorneys for James Dondero, Nancy Dondero, HCRE HCMS: 17 (Via videoconference) 18 STINSON 3102 Oak Lawn Avenue 19 Dallas, Texas 75219 20 BY: DEBORAH DEITSCH-PEREZ, ESQ. 21 BY: MICHAEL AIGEN, ESQ. 22 23 24 25	Page 3
1 APPEARANCES (Continued): 2 3 Attorneys for Nancy Dondero: 4 (Via videoconference) GREENBERG TRAURIG 5 220 Ross Avenue Dallas, Texas 75201 6 7 BY: DANIEL ELMS, ESQ. 8 9 Attorneys for The Dugaboy Investment Trust: 10 (Via videoconference) HELLER, DRAPER, HAYDEN, PATRICK & HORN 11 650 Poydras Street New Orleans, Louisiana 70130 12 13 BY: DOUGLAS DRAPER, ESQ. MICHAEL LANDIS, ESQ. 14 15 Attorneys for The Litigation Trust: 16 (Via videoconference) QUINN EMANUEL URQUHART & SULLIVAN 17 51 Madison Avenue New York, New York 10010 18 19 BY: ROBERT LOIGMAN, ESQ. DEBORAH NEWMAN, ESQ. 20 21 22 23 24 25	Page 4	1 APPEARANCES (Continued): 2 3 ALSO PRESENT: 4 (Via Videoconference) JACOB ARVOLD, Videographer 5 6 (Via Videoconference) LA ASIA CANTY, Legal Assistant c/o Pachulski Stang Ziehl & Jones 7 8 (Via Videoconference) AARON LAWRENCE, Law Clerk c/o Quinn Emanuel Urquhart & Sullivan 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 5

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1	I N D E X		1	I N D E X (Continued)
2			2	
3	EXAMINATION	Page No.	3	E X H I B I T S (Continued)
4	JAMES DONDERO		4	
5	BY MR. MORRIS	10	5	Exhibit
6			6	Name Description Page No.
7			6	Exhibit Highland Capital Management, 123
8	EXHIBITS		7	34 L.P., Consolidated Financial
9			8	Statements and Supplemental
10	Exhibit		8	Information, dated December
11	Name Description Page No.		9	31, 2018, Bates stamped
12	Exhibit James Dondero Compensation 56		9	D-CNL000212 through
13	68 and Benefits Statement, Bates stamped D-CNL003585		10	D-CNL000257
14	Exhibit James Dondero Compensation 59		10	Exhibit Memorandum, dated 130
15	50 and Benefits Statement, Bates stamped D-CNL003587		11	59 October 23, 2020, Bates
16	Exhibit E-mail correspondence, Bates 95		12	stamped HCMFAS 000025
17	53 stamped D-CNL003768 through D-CNL003770		13	through HCMFAS 000031
18	Exhibit E-mail correspondence, Bates 107		13	Exhibit Defendant James Dondero's 163
19	54 stamped D-CNL003777 through D-CNL003779		24	Objections and Responses to
20	Exhibit E-mail correspondence, Bates 116		14	Plaintiff's Requests for
21	56 stamped D-CNL003763		15	Admission, Interrogatories,
22	Exhibit Promissory Note, Bates 119		16	and Requests for Production
23	57 stamped D-CNL003764 through D-CNL003765		17	Exhibit Defendant NexPoint Advisors, 173
24			27	L.P.'s Objections and
25			17	Responses to Plaintiff's
			18	Requests for Admission,
			19	Interrogatories, and
			20	Requests for Production
			21	
			22	(Exhibits attached to transcript.)
			23	
			24	
			25	
		Page 8		Page 9
1	JAMES DONDERO		1	JAMES DONDERO
2	THE VIDEOGRAPHER: Good afternoon.		2	THE VIDEOGRAPHER: Thank you.
3	My name is Jacob Arvold. I'm a certified		3	This is the start of Media Number 1,
4	legal videographer in association with		4	Volume II [sic] of the video-recorded
5	TSG Reporting, Inc.		5	deposition of James Dondero in the matter
6	Due to the severity of COVID-19 and		6	of In Re: Highland Capital Management,
7	following the practice of social		7	L.P., in the United States Bankruptcy Court
8	distancing, I will not be in the same room		8	for the Northern District of Texas.
9	with the witness; instead, I will record		9	This deposition is being held
10	this video deposition remotely.		10	remotely on November 4, 2021, at
11	The reporter, Suzanne Stotz, also		11	approximately 1:17 p.m.
12	will not be in the same room and will swear		12	Counsel, please introduce
13	the witness remotely.		13	yourselves.
14	Do all parties stipulate to the		14	MR. MORRIS: Everybody is – is on
15	validity of video recording and remote		15	here. I don't – we can't take the time to
16	swearing and that it will be admissible in		16	do that. I'm familiar with everybody on
17	the courtroom as if it had been taken		17	here. Everybody's appeared in this action
18	following Rule 30 of the Federal Rules of		18	before, and I'd like to proceed.
19	Civil Procedures and the state's rules		19	THE VIDEOGRAPHER: All right. The
20	where this case is pending?		20	appearances will be on the stenographic
21	MR. MORRIS: Yes.		21	record.
22	If anybody objects to that, please		22	Will the court reporter please
23	speak up.		23	reswear the witness.
24	Nobody has spoken up. So everybody		24	THE COURT REPORTER: Could you raise
25	is deemed to have accepted that.		25	your hand.

<p>1        JAMES DONDERO</p> <p>2        THE WITNESS: (Complies with</p> <p>3        request.)</p> <p>4        JAMES DONDERO,</p> <p>5        having first been duly sworn, was examined and</p> <p>6        testified as follows:</p> <p>7        MS. DEITSCH-PEREZ: I only have one</p> <p>8        questions. Who's Robert Loigman?</p> <p>9        MR. LOIGMAN: I already stated for</p> <p>10       the record. I'm with Quinn Emanuel. I'm</p> <p>11       Debbie Newman's partner.</p> <p>12       MS. DEITSCH-PEREZ: Okay. Thank</p> <p>13       you.</p> <p>14       MR. MORRIS: Can we please put up on</p> <p>15       the screen the document that's been marked</p> <p>16       Exhibit 31.</p> <p>17       MS. CANTY: (Complies with request.)</p> <p>18       EXAMINATION</p> <p>19       BY MR. MORRIS:</p> <p>20       Q. Mr. Dondero, do you understand that</p> <p>21       this is a continuation of your deposition from</p> <p>22       Friday?</p> <p>23       A. Yes.</p> <p>24       Q. Have you spoken with anybody about</p> <p>25       your testimony since we concluded the</p>	Page 10	Page 11
<p>1        JAMES DONDERO</p> <p>2        A. Yes.</p> <p>3        Q. How much time did you spend speaking</p> <p>4        with your attorney since the conclusion of the</p> <p>5        last deposition?</p> <p>6        A. 30 minutes, 40 minutes.</p> <p>7        Q. Are you aware that Alan Johnson</p> <p>8        testified in this case the other day?</p> <p>9        A. I don't know who Alan Johnson is.</p> <p>10       Uh, no.</p> <p>11       Q. Okay. Is it fair to say that you</p> <p>12       have no knowledge of Mr. Johnson's testimony?</p> <p>13       A. I have no knowledge of Mr. Johnson's</p> <p>14       testimony.</p> <p>15       Q. Are you aware that an expert was</p> <p>16       examined by me earlier in the week in</p> <p>17       connection with this case?</p> <p>18       A. I'm aware there's an expert. I'm</p> <p>19       not – I'm not aware that you've examined,</p> <p>20       deposed, or whatever you did with him.</p> <p>21       Q. Okay. When did you speak with your</p> <p>22       counsel for 30 minutes about – following last</p> <p>23       Friday's examination?</p> <p>24       A. About 40 minutes ago.</p> <p>25       Q. Okay.</p>	Page 12	Page 13
<p>1        JAMES DONDERO</p> <p>2        MR. MORRIS: Can we go to</p> <p>3        paragraph 82 of this document –</p> <p>4        Q. – Mr. Dondero, do you see that this</p> <p>5        is your answer to the Plaintiff's Amended</p> <p>6        Complaint.</p> <p>7        A. Yes.</p> <p>8        Q. And we looked at this the other day;</p> <p>9        do you remember that?</p> <p>10       A. Yes.</p> <p>11       MR. MORRIS: Can we go to page –</p> <p>12       paragraph 82, please.</p> <p>13       MS. CANTY: (Complies with request.)</p> <p>14       BY MR. MORRIS:</p> <p>15       Q. And I just want to table set to make</p> <p>16       sure we're on the same page.</p> <p>17       Paragraph 82 describes the</p> <p>18       agreements that you entered into with Dugaboy</p> <p>19       consuming the forgiveness of certain Promissory</p> <p>20       Notes subject to conditions subsequent.</p> <p>21       Is that a fair overarching overview</p> <p>22       of the nature of the agreements?</p> <p>23       A. Yes.</p> <p>24       Q. Okay. And for the rest of the</p> <p>25       deposition today, when I use the phrase</p>		

<p>1 JAMES DONDERO</p> <p>2 "agreements," I'm going to mean the agreements</p> <p>3 that are referred to in paragraph 82; is that</p> <p>4 fair?</p> <p>5 A. Yes, generally. If I have any</p> <p>6 questions, I'll – I'll ask.</p> <p>7 Q. Thank you very much.</p> <p>8 The agreements covered each of the</p> <p>9 notes that are the subject of the lawsuits that</p> <p>10 Highland commenced against you, HCRE Services,</p> <p>11 and NexPoint; is that right?</p> <p>12 A. The – yes.</p> <p>13 Q. What are you looking at?</p> <p>14 A. Just this note sheet that covers all</p> <p>15 the notes.</p> <p>16 Q. Oh.</p> <p>17 MR. MORRIS: Deborah, I would demand</p> <p>18 that that sheet be produced immediately.</p> <p>19 MS. DEITSCH-PEREZ: Okay.</p> <p>20 MR. MORRIS: Okay. And I would ask</p> <p>21 him to put it away.</p> <p>22 MS. DEITSCH-PEREZ: No. He's a</p> <p>23 30(b)(6) witness. He's entitled to have a</p> <p>24 list of the notes. He sure he is.</p> <p>25 MR. MORRIS: I'm telling you now –</p>	Page 14	Page 15
<p>1 JAMES DONDERO</p> <p>2 okay?</p> <p>3 Please put it away.</p> <p>4 THE WITNESS: Isn't that what this</p> <p>5 deposition is, right? This deposition –</p> <p>6 MS. DEITSCH-PEREZ: Well, this</p> <p>7 deposition is both.</p> <p>8 We're going to take a break for a</p> <p>9 second. Let me think about that, but</p> <p>10 I'll –</p> <p>11 MR. MORRIS: I object. I really</p> <p>12 object. I really object. I'm glad that</p> <p>13 this is all on the record. I object.</p> <p>14 My request is that he put it away</p> <p>15 and answer questions in his capacity as an</p> <p>16 individual.</p> <p>17 I don't know why we need to take a</p> <p>18 break.</p> <p>19 MS. DEITSCH-PEREZ: Well, because</p> <p>20 I'm going to go take a picture of it and</p> <p>21 send it to you.</p> <p>22 MR. MORRIS: I don't want you to do</p> <p>23 that, though.</p> <p>24 MS. DEITSCH-PEREZ: Why don't you</p> <p>25 want – okay.</p>	Page 16	Page 17

<p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: No, no, not at all.</p> <p>3 THE VIDEOGRAPHER: Okay.</p> <p>4 MR. MORRIS: And just keep the --</p> <p>5 keep the record going.</p> <p>6 THE VIDEOGRAPHER: Yep, will do.</p> <p>7 MR. MORRIS: And we're not off the</p> <p>8 record?</p> <p>9 THE VIDEOGRAPHER: Correct.</p> <p>10 THE COURT REPORTER: Correct.</p> <p>11 MS. DEITSCH-PEREZ: Okay. We're</p> <p>12 back on the record.</p> <p>13 THE VIDEOGRAPHER: We remained on</p> <p>14 the record.</p> <p>15 MS. DEITSCH-PEREZ: Okay. And this</p> <p>16 part – this – at this point Mr. Morris</p> <p>17 only taking Mr. Dondero's deposition in his</p> <p>18 personal capacity, not as a 30(b)(6)</p> <p>19 witness.</p> <p>20 If you want to resume taking his</p> <p>21 deposition as a 30(b)(6) witness, let me</p> <p>22 know; and I will tell him to get his list</p> <p>23 of notes.</p> <p>24 MR. MORRIS: So he doesn't have it</p> <p>25 in front of him right now?</p>	Page 18	Page 19
<p>1 JAMES DONDERO</p> <p>2 you enter into with Dugaboy trustee concerning</p> <p>3 Promissory Notes?</p> <p>4 A. Is your question – is your</p> <p>5 questions how many Notes were entered into?</p> <p>6 Q. No. How many separate agreements</p> <p>7 did you enter into?</p> <p>8 A. The 2017, '18, and '19 agreements.</p> <p>9 Q. Okay. I didn't ask you what</p> <p>10 agreements. I asked how many agreements you</p> <p>11 entered into with the Dugaboy trustee.</p> <p>12 MS. DEITSCH-PEREZ: Asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: Three major ones.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Are there any minor ones?</p> <p>17 A. Not that I can recall right now.</p> <p>18 Q. Okay. When did you enter into your</p> <p>19 first major agreement with the Dugaboy trustee?</p> <p>20 A. At the end of '17.</p> <p>21 Q. Meaning December 2017 or early 2018?</p> <p>22 A. Yes.</p> <p>23 Q. What Promissory Notes are the</p> <p>24 subject of the first major agreement that you</p> <p>25 entered into with the Dugaboy trust – with</p>	Page 20	Page 21
<p>1 JAMES DONDERO</p> <p>2 the Dugaboy trustee?</p> <p>3 A. I don't remember which ones</p> <p>4 specifically. I remember the amount was more</p> <p>5 substantial than subsequent years.</p> <p>6 Q. Do you know how many Promissory</p> <p>7 Notes were the subject of your first major</p> <p>8 agreement with the Dugaboy trustee?</p> <p>9 A. No.</p> <p>10 Q. Can you identify the maker of any</p> <p>11 Note that's subject to the first major</p> <p>12 agreement with the Dugaboy trustee?</p> <p>13 A. Not without my list or details.</p> <p>14 Q. Can you identify the principal</p> <p>15 amount of any Promissory Note that was subject</p> <p>16 to the first agreement that you entered into</p> <p>17 with the Dugaboy trustee?</p> <p>18 A. I know they were – I know the gross</p> <p>19 amount. I know they were some of the term</p> <p>20 loans, but I don't know the specifics.</p> <p>21 Q. Can you tell me the aggregate</p> <p>22 amount – withdrawn.</p> <p>23 Can you tell me the aggregate</p> <p>24 principal amount of the Notes that are the</p> <p>25 subject of your first agreement with the</p>		

<p>1 JAMES DONDERO</p> <p>2 Dugaboy trustee?</p> <p>3 A. I – I believe it was 30 – 30 some</p> <p>4 odd million, 30 – I can't remember the</p> <p>5 principal and interest, but it's only 30 – 34,</p> <p>6 35, 36. It was in that range.</p> <p>7 Q. Did your first agreement with the –</p> <p>8 withdrawn.</p> <p>9 Can you identify the date of any of</p> <p>10 the Promissory Notes that are the subject of</p> <p>11 your first agreement with the Dugaboy trustee?</p> <p>12 A. No.</p> <p>13 Q. Can you tell me the year that any of</p> <p>14 the Promissory Notes that are the subject of</p> <p>15 the – withdrawn.</p> <p>16 Can you tell me the year that any of</p> <p>17 the Promissory Notes were entered into that are</p> <p>18 the subject of your first agreement with the</p> <p>19 Dugaboy trustee?</p> <p>20 MS. DEITSCH-PEREZ: Asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: No, not off the top of</p> <p>23 my head.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. When did you – did – when did you</p>	Page 22	<p>1 JAMES DONDERO</p> <p>2 enter into the second agreement with the</p> <p>3 Dugaboy trustee?</p> <p>4 Was that in December of 2018 or</p> <p>5 early 2019?</p> <p>6 A. Yes.</p> <p>7 Q. How many Notes are subject to your</p> <p>8 second agreement with the Dugaboy trustee?</p> <p>9 A. Less than the first, but I don't</p> <p>10 know how many.</p> <p>11 Q. You don't know the number of Notes</p> <p>12 that are the subject of your second agreement</p> <p>13 with the Dugaboy trustee; is that right?</p> <p>14 A. Correct.</p> <p>15 Q. Can you identify the maker of any</p> <p>16 Notes that are the subject of your second</p> <p>17 agreement with the Dugaboy trustee?</p> <p>18 A. No, I – I – no, I don't remember.</p> <p>19 Q. Okay. So as you sit here right now,</p> <p>20 you can't identify the maker of any of the</p> <p>21 Notes that are the subject of the second</p> <p>22 agreement with the Dugaboy trustee; is that</p> <p>23 right?</p> <p>24 A. Well, it would be one of the three</p> <p>25 parties or four parties here, me or NexPoint or</p>	Page 23
<p>1 JAMES DONDERO</p> <p>2 whatever; but I don't remember –</p> <p>3 Q. Okay.</p> <p>4 A. – off the top of my head.</p> <p>5 Q. Off the top of your head, can you</p> <p>6 tell me the original principal amount of any</p> <p>7 Note that's subject to your second agreement</p> <p>8 with the Dugaboy trustee?</p> <p>9 A. No. I just – no.</p> <p>10 Q. Can you identify the date on which</p> <p>11 any of the Promissory Notes were executed that</p> <p>12 were the subject of your second agreement with</p> <p>13 the Dugaboy trustee?</p> <p>14 A. No.</p> <p>15 Q. Can you tell me the aggregate</p> <p>16 principal amount of the Notes that are the</p> <p>17 subject of your second agreement with the</p> <p>18 Dugaboy trustee?</p> <p>19 A. Yes. A fraction of the prior year.</p> <p>20 Less than ten million.</p> <p>21 Q. Can you be anymore precise than</p> <p>22 that?</p> <p>23 A. Approximately ten million, I think.</p> <p>24 Just under.</p> <p>25 Q. Okay. Did you enter into your third</p>	Page 24	<p>1 JAMES DONDERO</p> <p>2 agreement with the Dugaboy trustee in December</p> <p>3 2019 or early 2020?</p> <p>4 A. Yes.</p> <p>5 Q. That's after the petition date; do I</p> <p>6 have that right?</p> <p>7 A. I – yes.</p> <p>8 Q. Did you do it before or after</p> <p>9 January 9, 2020?</p> <p>10 A. Before, I believe.</p> <p>11 Q. So while you were still in control</p> <p>12 of Highland but after the petition date, you</p> <p>13 entered into your third agreement with the</p> <p>14 Dugaboy trustee concerning Promissory Notes.</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Did you ever inform the bankruptcy</p> <p>18 court of this agreement?</p> <p>19 A. No.</p> <p>20 Q. Did you ever inform the independent</p> <p>21 directors of this agreement that you entered</p> <p>22 into after the petition date?</p> <p>23 A. No.</p> <p>24 Q. Can you tell me which notes are the</p> <p>25 subject of your third agreement with the</p>	Page 25

<p>1 JAMES DONDERO</p> <p>2 Dugaboy trustee?</p> <p>3 A. No.</p> <p>4 Q. Can you identify the maker on any</p> <p>5 Note that's the subject of your agreement that</p> <p>6 you entered into after the petition date with</p> <p>7 the Dugaboy trustee?</p> <p>8 A. Not off the top of my head.</p> <p>9 MS. DEITSCH-PEREZ: I mean, John, if</p> <p>10 you would let him look at his list, he</p> <p>11 could tell you.</p> <p>12 But if you insist on making this a</p> <p>13 memory test of 18 or so different things or</p> <p>14 however many there are, 13, 14, then this</p> <p>15 is – it's your deposition. But if you</p> <p>16 want more specific details, he could look</p> <p>17 at the list.</p> <p>18 MR. MORRIS: Okay. That's not even</p> <p>19 an objection let alone a speaking</p> <p>20 objection.</p> <p>21 It is my deposition –</p> <p>22 MS. DEITSCH-PEREZ: No.</p> <p>23 MR. MORRIS: It is my deposition,</p> <p>24 and I would appreciate your not making</p> <p>25 gratuitous comments.</p>	Page 26	<p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Mr. Dondero, can you tell me the</p> <p>4 aggregate value of the Notes that are the</p> <p>5 subject of the third agreement that you entered</p> <p>6 into with the Dugaboy trustee after the</p> <p>7 petition date?</p> <p>8 A. I believe it was about a million</p> <p>9 bucks.</p> <p>10 Q. And who were the makers of the Notes</p> <p>11 that are the subject of the agreement with the</p> <p>12 Dugaboy trustee that you entered into after the</p> <p>13 petition date?</p> <p>14 A. I don't know.</p> <p>15 Q. Without the sheet that you looked at</p> <p>16 earlier, you have no ability to tell me which</p> <p>17 notes were the subject of which agreement that</p> <p>18 you entered into with the Dugaboy trustee,</p> <p>19 correct?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: If I'm not certain off</p> <p>23 the top of my head I can remember</p> <p>24 accurately, I don't want to speculate.</p> <p>25</p>	Page 27
<p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. I don't want you to</p> <p>4 speculate either. So I'm going to ask you just</p> <p>5 broad follow-up questions.</p> <p>6 Can you identify any Promissory Note</p> <p>7 that is the subject of any specific agreement</p> <p>8 that you ever entered into with the Dugaboy</p> <p>9 trustee without looking at the list?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form. He's already done that to some</p> <p>12 degree.</p> <p>13 THE WITNESS: I believe it covered</p> <p>14 virtually all of them. So I don't remember</p> <p>15 which ones specifically in each year.</p> <p>16 Generally, it was, I believe, the</p> <p>17 ones incurred in that year; but I don't</p> <p>18 remember which entities. But again, the</p> <p>19 ultimate result being that the term loans,</p> <p>20 the demand notes, the things incurred, the</p> <p>21 things outstanding were part of the</p> <p>22 agreement.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Sir, you never wrote down a list of</p> <p>25 the notes that are the subject of the</p>	Page 28	<p>1 JAMES DONDERO</p> <p>2 agreements, correct?</p> <p>3 A. Correct.</p> <p>4 Q. You never asked anybody to make a</p> <p>5 list of the notes that were the subject of each</p> <p>6 of the agreements, correct?</p> <p>7 A. Correct.</p> <p>8 Q. You're not aware of any document</p> <p>9 that was created prior to the commencement of</p> <p>10 these lawsuits that identifies the Notes that</p> <p>11 are the subject of the agreements, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Other than the Promissory Notes that</p> <p>14 are the subject of this lawsuit – withdrawn.</p> <p>15 Other than the Promissory Notes that</p> <p>16 are the subject of these lawsuits, are you</p> <p>17 aware of any other doc – Promissory Notes</p> <p>18 that are the subject of an agreement with the</p> <p>19 Dugaboy trustee?</p> <p>20 A. I believe there are from time to</p> <p>21 time, yes. But I – I don't know off the top</p> <p>22 of my head.</p> <p>23 Q. Can you identify the maker of any</p> <p>24 Promissory Note that is the subject of any</p> <p>25 agreement with the Dugaboy trustee other than</p>	Page 29

<p>1           JAMES DONDERO</p> <p>2 the Promissory Notes that are the subject of</p> <p>3 the pending lawsuits?</p> <p>4    A. Not specifically, but I believe</p> <p>5 there are.</p> <p>6    Q. Okay. Can you identify the</p> <p>7 principal amount of any Promissory Note that is</p> <p>8 the subject of an agreement with the Dugaboy</p> <p>9 trustee that is not part of the pending</p> <p>10 lawsuits?</p> <p>11   A. Not specifically.</p> <p>12   Q. Can you tell me the year in which</p> <p>13 any Promissory Note was ever executed that is</p> <p>14 the subject of any agreement with the Dugaboy</p> <p>15 trustee other than the Promissory Notes that</p> <p>16 are the subject of the pending lawsuits?</p> <p>17   A. I believe there were several, and I</p> <p>18 believe there were numerous ones over the</p> <p>19 years.</p> <p>20   Q. Okay. And – and are those</p> <p>21 Promissory Notes subject to one of the three</p> <p>22 agreements that we've identified or subject to</p> <p>23 some other agreement with the Dugaboy trustee?</p> <p>24   A. Well, they weren't to these related</p> <p>25 entities. I – I don't know what the</p>	Page 30	<p>1           JAMES DONDERO</p> <p>2 agreements were specifically subject to.</p> <p>3    Q. Are you the person who entered into</p> <p>4 the agreement with the Dugaboy trustee</p> <p>5 concerning the notes that you are describing</p> <p>6 right now?</p> <p>7    A. Yes, I guess.</p> <p>8    Q. As the person who entered into the</p> <p>9 agreement with the Dugaboy trustee concerning</p> <p>10 Notes that are not the subject of the pending</p> <p>11 litigation, can you identify anything about</p> <p>12 those Notes, whether it's the maker, the date,</p> <p>13 the principal amount, anything at all?</p> <p>14   A. Not off the top of my head.</p> <p>15   Q. Okay. What would – what would you</p> <p>16 have to look at to know? The chart or</p> <p>17 something else?</p> <p>18   A. No, not this – not this chart.</p> <p>19 This only has to do with what we thought this</p> <p>20 deposition was going to be about.</p> <p>21       It would be the financials of</p> <p>22 Dugaboy; and then from there, the detail</p> <p>23 regarding any Notes that it has.</p> <p>24   Q. Did you enter into an agreement with</p> <p>25 the Dugaboy trustee to forgive a Promissory</p>	Page 31
<p>1           JAMES DONDERO</p> <p>2 Note where Dugaboy is the maker and Highland is</p> <p>3 the payee?</p> <p>4    A. Dugaboy – can you repeat that</p> <p>5 question one more time?</p> <p>6    Q. Sure. Did you enter into an</p> <p>7 agreement with the Dugaboy trustee relating to</p> <p>8 any Promissory Note where Dugaboy is the maker?</p> <p>9    A. No, I don't believe so.</p> <p>10   Q. Okay. So you don't have any</p> <p>11 recollection of ever entering into an agreement</p> <p>12 with the Dugaboy trustee concerning the</p> <p>13 potential forgiveness of any Note that was made</p> <p>14 by Dugaboy, correct?</p> <p>15   A. I – I do not believe so.</p> <p>16   Q. Okay. And is there a – is there a</p> <p>17 document that we could look at that would</p> <p>18 refresh your recollection?</p> <p>19   A. Not beyond the financials of Dugaboy</p> <p>20 and any relevant Note detail.</p> <p>21   Q. And would – is it – is it your</p> <p>22 testimony that an agreement with Dugaboy would</p> <p>23 be reflected in the Dugaboy financial</p> <p>24 statements?</p> <p>25   A. No, but the Notes would be.</p>	Page 32	<p>1           JAMES DONDERO</p> <p>2    Q. Well, the Dugaboy Notes are</p> <p>3 reflected in Highland's financial statements.</p> <p>4    Do you want me to get that?</p> <p>5    A. No. I didn't think that was – I</p> <p>6 didn't think that was the question you were</p> <p>7 asking me.</p> <p>8    Q. I apologize. Maybe it was my fault.</p> <p>9       What would we have to look at in</p> <p>10 order to refresh your recollection as to</p> <p>11 whether or not you entered into an agreement</p> <p>12 with the Dugaboy trustee concerning the</p> <p>13 potential forgiveness of any Note made by</p> <p>14 Dugaboy?</p> <p>15   A. Other than the ones we're talking</p> <p>16 about today, right?</p> <p>17   Q. We're not talking about – there's</p> <p>18 no Promissory Note where Dugaboy is the maker</p> <p>19 that is the subject of any of the pending</p> <p>20 lawsuits, correct?</p> <p>21   A. Correct.</p> <p>22   Q. So I'm asking you to identify if you</p> <p>23 can any Promissory Note that is the subject of</p> <p>24 any agreement you have ever entered into with</p> <p>25 the Dugaboy trustee that is not the subject of</p>	Page 33

<p>1        JAMES DONDERO</p> <p>2 one of the pending lawsuits.</p> <p>3        Do you understand that that's what</p> <p>4 I'm trying to get at?</p> <p>5        MS. DEITSCH-PEREZ: Asked and</p> <p>6        answered.</p> <p>7        THE WITNESS: Yes.</p> <p>8 BY MR. MORRIS:</p> <p>9        Q. Okay. Can you identify any such</p> <p>10 Promissory Note?</p> <p>11        A. No, not specifically as I sit here</p> <p>12 today.</p> <p>13        Q. Okay. Other than the promissory –</p> <p>14 withdrawn.</p> <p>15        Are you familiar with the term</p> <p>16 "majority interest" as used in the Highland</p> <p>17 Limited Partnership Agreement?</p> <p>18        A. Yes.</p> <p>19        Q. Okay. Other than the Promissory</p> <p>20 Notes that are the subject of the pending</p> <p>21 lawsuits, are you aware of any other Promissory</p> <p>22 Notes that are the subject of any agreement</p> <p>23 with the majority interest?</p> <p>24        MS. DEITSCH-PEREZ: Object to the</p> <p>25 form. Asked and answered.</p>	Page 34	Page 35
<p>1        JAMES DONDERO</p> <p>2 been numerous notes other than to these</p> <p>3 entities today where Dugaboy was the maker</p> <p>4 or recipient or whatever.</p> <p>5 BY MR. MORRIS:</p> <p>6        Q. So you do believe that Dugaboy was</p> <p>7 the maker of a Promissory Note that's subject</p> <p>8 to an agreement with the majority interest?</p> <p>9        MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11        THE WITNESS: What I'm saying is I</p> <p>12 believe Dugaboy had other – made other</p> <p>13 Notes and received other Notes from other</p> <p>14 entities other than Highland.</p> <p>15 BY MR. MORRIS:</p> <p>16        Q. Does that have anything to do with</p> <p>17 Highland?</p> <p>18        Maybe I wasn't clear. I'm using the</p> <p>19 phrase "majority interest" as that phrase – I</p> <p>20 thought we had – I thought we had an</p> <p>21 understanding – as that phrase is used in the</p> <p>22 Highland Limited Partnership Agreement, right?</p> <p>23        A. I thought it was a definition term</p> <p>24 in the Highland, L.P.</p> <p>25        Q. It is, and I just – I'd like to</p>	Page 36	Page 37

<p>1           JAMES DONDERO</p> <p>2 instead of prepaying a Note, it could have left</p> <p>3 it in an existing Note outstanding and then</p> <p>4 issued a separate Note, right, instead of</p> <p>5 prepaying, right?</p> <p>6           So I don't know in the – in the pas</p> <p>7 past or how exactly they handled prepay</p> <p>8 consistently over time. But at the moment, I</p> <p>9 don't believe there's a loan going from Dugaboy</p> <p>10 to Highland.</p> <p>11          But I do believe over the years,</p> <p>12 there were numerous loans from Dugaboy to other</p> <p>13 entities other than the ones we're talking</p> <p>14 about today.</p> <p>15          MS. DEITSCH-PEREZ: Okay. John,</p> <p>16 we've gone way far afield of the topics for</p> <p>17 this deposition or anything that you ought</p> <p>18 to be even asking this individual witness</p> <p>19 about given what these litigations are.</p> <p>20 Could we move on, please?</p> <p>21          MR. MORRIS: No. Other than –</p> <p>22          MS. DEITSCH-PEREZ: You're spending</p> <p>23 time on things other than the –</p> <p>24          MR. MORRIS: Please stop talking.</p> <p>25          MS. DEITSCH-PEREZ: – action.</p>	Page 38	Page 39
<p>1           JAMES DONDERO</p> <p>2          A. I – no – or wait. Hold on a</p> <p>3 second.</p> <p>4          Yes. I guess, yes.</p> <p>5          Q. Okay. At the time you entered into</p> <p>6 the agreements, did you understand that</p> <p>7 Dugaboy, as a majority – as a representative</p> <p>8 of a majority of the Class A shareholders of</p> <p>9 the plaintiff was the entity that entered into</p> <p>10 the agreement on behalf of Highland?</p> <p>11          A. Yes.</p> <p>12          Q. And your sister Nancy is the trustee</p> <p>13 of Dugaboy today, correct?</p> <p>14          A. Yes.</p> <p>15          Q. And Nancy was the trustee of Dugaboy</p> <p>16 at the time you entered into each of the</p> <p>17 agreements, correct?</p> <p>18          A. Yes.</p> <p>19          Q. And you knew that at the time you</p> <p>20 entered each of the agreements, correct?</p> <p>21          A. Yes.</p> <p>22          Q. You knew she was acting on behalf of</p> <p>23 Dugaboy, correct?</p> <p>24          A. Yes.</p> <p>25          Q. Your understanding at that time that</p>	Page 40	Page 41

<p>1        JAMES DONDERO</p> <p>2 due to them as that they would ultimately be</p> <p>3 compensation; but to be a bona fide Note and to</p> <p>4 have bona fide deferral at the time that they</p> <p>5 were issued, they were the debtor's property.</p> <p>6 And I guess they remained such until satisfied</p> <p>7 or until the condition as present – the</p> <p>8 condition subsequent is either triggered or</p> <p>9 impossible to be triggered.</p> <p>10      Q. Okay. Is it fair to say that the</p> <p>11 Promissory Notes that are the subject of the</p> <p>12 agreements were assets of the debtor at the</p> <p>13 time you entered into the agreements?</p> <p>14      A. Yes.</p> <p>15      Q. At the time you entered into the</p> <p>16 agreements, you understood that Dugaboy was</p> <p>17 exercising control over the debtor's property,</p> <p>18 correct?</p> <p>19      MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21      MR. MORRIS: Withdrawn.</p> <p>22 BY MR. MORRIS:</p> <p>23      Q. At the time you entered into the</p> <p>24 agreements, you understood that the Dugaboy</p> <p>25 trustee was going to exercise control over the</p>	Page 42	<p>1        JAMES DONDERO</p> <p>2 debtor's property, correct?</p> <p>3        MS. DEITSCH-PEREZ: Object. Object</p> <p>4 to the form.</p> <p>5        THE WITNESS: Exercise control? I</p> <p>6 understood the trustee had the ability to</p> <p>7 grant the, whatever you want to call them,</p> <p>8 conditions subsequent.</p> <p>9 BY MR. MORRIS:</p> <p>10      Q. On that –</p> <p>11      A. Yes.</p> <p>12      Q. And that was – by entering into the</p> <p>13 agreement, would you agree with me, that the</p> <p>14 Dugaboy trustee exercised control over the</p> <p>15 Promissory Notes?</p> <p>16      MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18      THE WITNESS: They – The trustee</p> <p>19 exercised the rights given to it as a</p> <p>20 majority of Class A holders.</p> <p>21 BY MR. MORRIS:</p> <p>22      Q. Okay. And is it your understanding</p> <p>23 that as part of the right, it altered the</p> <p>24 characteristics of the Promissory Notes?</p> <p>25      MS. DEITSCH-PEREZ: Object to the</p>	Page 43
<p>1        JAMES DONDERO</p> <p>2 form.</p> <p>3        THE WITNESS: I just want to – I</p> <p>4 believe my testimony, I granted the</p> <p>5 conditions subsequent is my interpretation.</p> <p>6 BY MR. MORRIS:</p> <p>7      Q. Right. And so that's fine. But</p> <p>8 that's – that's the thing that happened, but</p> <p>9 I'm just asking you what the impact of that</p> <p>10 was.</p> <p>11      When the Dugaboy trustee entered</p> <p>12 into the agreement, the result was that the</p> <p>13 terms and conditions of the Promissory Note</p> <p>14 were altered, correct?</p> <p>15      MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17      THE WITNESS: I don't want to – I</p> <p>18 want to say I don't know to that next week.</p> <p>19 BY MR. MORRIS:</p> <p>20      Q. You can't – okay. You can't tell</p> <p>21 me if your agreement with the Dugaboy trustee</p> <p>22 altered the terms and conditions of the</p> <p>23 Promissory Notes that were subject to the</p> <p>24 agreement; you can't tell me that?</p> <p>25      MS. DEITSCH-PEREZ: Object to the</p>	Page 44	<p>1        JAMES DONDERO</p> <p>2 form.</p> <p>3        THE WITNESS: Yeah. I – again, it</p> <p>4 sounds like you're trying to take me</p> <p>5 towards legal terms of changing terms or</p> <p>6 modification in a Note or whatever; and</p> <p>7 I – I'm not – I don't have an opinion or</p> <p>8 the expert to comment on that.</p> <p>9        I can just say I knew she had the</p> <p>10 ability to create conditions subsequent.</p> <p>11 BY MR. MORRIS:</p> <p>12      Q. Okay. So let's take, for example,</p> <p>13 the Notes that you signed.</p> <p>14      Those were demand notes, right?</p> <p>15      A. Yes.</p> <p>16      Q. Okay. And after you entered into</p> <p>17 the agreement with the Dugaboy trustee, instead</p> <p>18 of it being a demand note, it was now a demand</p> <p>19 note subject to conditions subsequent, correct?</p> <p>20      MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22      THE WITNESS: Yeah, that ultimately</p> <p>23 they couldn't be demanded until conditions</p> <p>24 subsequent were met or unable to be met.</p> <p>25</p>	Page 45

<p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. So can you agree with me that</p> <p>4 that – that that was a change in the term of</p> <p>5 the Note?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Yeah. See, that's the</p> <p>9 part I don't want to comment on. I just</p> <p>10 want to say I don't know.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Wasn't that the purpose of</p> <p>13 entering into the agreements was to change the</p> <p>14 terms of the each of the Promissory Notes?</p> <p>15 Wasn't that your intent?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 THE WITNESS: I'd say the intent was</p> <p>19 to find and make compensation appropriate</p> <p>20 for industry standards and Highland in</p> <p>21 particular.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. And did you believe that the Notes</p> <p>24 as originally drafted and signed by you or the</p> <p>25 representatives of the makers didn't take that</p>	Page 46	<p>1 JAMES DONDERO</p> <p>2 into account?</p> <p>3 A. I went through this already last</p> <p>4 time, but the Notes were intentionally loose</p> <p>5 and, I think, anticipated the ability to adjust</p> <p>6 the subsequent conditions or other things.</p> <p>7 Q. Now, you told me that each of the</p> <p>8 agreements was entered into between December of</p> <p>9 one year or – actually, withdrawn.</p> <p>10 If we look at paragraph 82, it says</p> <p>11 that each of the agreements was made, quote,</p> <p>12 "sometime between the December of the year in</p> <p>13 which each note was made and February of the</p> <p>14 following year."</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Can you identify with any greater</p> <p>18 specificity when you entered into the first</p> <p>19 agreement with the Dugaboy trustee referenced</p> <p>20 in paragraph 82?</p> <p>21 A. No.</p> <p>22 Q. It's sometime within that 90-day</p> <p>23 period; does that sound right to you?</p> <p>24 A. I believe it was closer to the</p> <p>25 holidays around the turn of the year, but I</p>	Page 47
<p>1 JAMES DONDERO</p> <p>2 don't have specific recollection.</p> <p>3 Q. Is that answer the same for all</p> <p>4 three agreements or only for the first</p> <p>5 agreement?</p> <p>6 A. That would be the same for all</p> <p>7 three.</p> <p>8 Q. So then why – why does paragraph 82</p> <p>9 refer to sometime between December of the year</p> <p>10 in which each note was made and February of the</p> <p>11 following year if your best recollection is</p> <p>12 that it happened around the holidays?</p> <p>13 A. I don't know.</p> <p>14 Q. All right. But as you sit here</p> <p>15 right now, is it your testimony that you</p> <p>16 believe each of the agreements was signed –</p> <p>17 was more likely signed in December rather than</p> <p>18 January or February?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I think signed is a –</p> <p>22 I'm not – I'm not testifying that signed,</p> <p>23 I guess.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. I apologize. Maybe that was my</p>	Page 48	<p>1 JAMES DONDERO</p> <p>2 mistake.</p> <p>3 Is it your testimony that each –</p> <p>4 that you entered each of the agreements with</p> <p>5 the Dugaboy trustee in December rather than</p> <p>6 January or February of the years indicated?</p> <p>7 A. That's the best of my recollection,</p> <p>8 but there may have been one year that was</p> <p>9 towards the wider end of the interval. I can't</p> <p>10 remember with more specificity.</p> <p>11 Q. Okay. Do you know of anything that</p> <p>12 memorialized the date on which you entered into</p> <p>13 any of the agreements?</p> <p>14 A. No, other than – no, other than –</p> <p>15 no, other than, you know, other than travel</p> <p>16 schedule or phone logs or whatever.</p> <p>17 Q. All right. During the discussion</p> <p>18 that led to the agreements, did you ever</p> <p>19 provide any information to Nancy or to Dugaboy</p> <p>20 concerning your compensation?</p> <p>21 A. Just – just verbal. I mean, she</p> <p>22 knew it was low, and she knew we had reinvested</p> <p>23 most everything we made back in the company</p> <p>24 over the years. And that was the – that was,</p> <p>25 I think, understanding by all involved; and it</p>	Page 49

<p>1        JAMES DONDERO  2 should be obvious to anybody who's looked at  3 the numbers even in hindsight.  4        MR. MORRIS: Okay. I move to  5        strike.  6 BY MR. MORRIS:  7        Q. And please listen carefully to my  8 question.  9        During the discussions that led to  10 each of the agreements, did you ever provide  11 any information to your sister or Dugaboy  12 concerning your compensation?  13        MS. DEITSCH-PEREZ: Asked and  14        answered.  15        THE WITNESS: Not specifically.  16 BY MR. MORRIS:  17        Q. Did you provide any general  18 information to your sister or to Dugaboy prior  19 to the entry of any of the three agreements  20 that you entered into with the Dugaboy trustee?  21        A. I would repeat the answer that was  22 struck two questions ago.  23        Q. That's the information that you gave  24 to her?  25        A. Yeah. It was – again, it was </p>	Page 50	<p>1        JAMES DONDERO  2 verbal, and it was – but an understanding but  3 a clear and obvious understanding.  4        Q. I want to know exactly what  5 information you gave to your sister and to  6 Dugaboy before entering into any of the three  7 agreements with the Dugaboy trustee?  8        A. Most of what I had made over the  9 years was rolled back into the business to  10 propel growth and initiatives. And that my  11 actual compensation was very modest based on  12 industry standards and relevant  13 responsibilities at Highland.  14        Q. Did you tell her anything else?  15 Withdrawn.  16        Did you tell your – Nancy or  17 Dugaboy anything else beyond what you've now  18 testified to?  19        A. You know, I think some of what I  20 testified to earlier, that forgiveness of the  21 Notes would be a modest increase in that  22 compensation but still not be in the ZIP code  23 of fair and appropriate compensation and that  24 the value of the Notes in aggregate were de  25 minimus relative to Highland and de minimis </p>	Page 51
<p>1        JAMES DONDERO  2 relative to Dugaboy.  3        Q. Did you tell her anything else?  4        A. Anything else would have fallen into  5 the buckets I just described, but I can't  6 remember specifically as I sit here today.  7        Q. Did you ever tell your sister or  8 Dugaboy that your salary was less than a  9 million dollars?  10        A. I –  11        MS. DEITSCH-PEREZ: I mean, just  12 from Highland?  13        THE WITNESS: Repeat the question  14 again for me, please.  15 BY MR. MORRIS:  16        Q. Did you ever tell your sister that  17 your salary was less than a million dollars a  18 year?  19        A. I know my sister was aware that it  20 was very low, and it kind of decreased over  21 time, and I think it was paid by different  22 entities.  23        Whether it was a million or  24 2 million, I can't remember exactly what I  25 would have told her; but it would have been in </p>	Page 52	<p>1        JAMES DONDERO  2 that ZIP code to paint the proper picture that  3 the cash compensation for somebody in my role  4 was well below industry standards.  5        Q. Do you recall anything else that you  6 shared with your sister concerning your  7 compensation that you haven't testified to?  8        A. Like I said, it would generally fall  9 into those buckets as I sit here today.  10        Q. Did your sister or Dugaboy ask you  11 any questions about your compensation before  12 entering into the three agreements that you  13 entered into with the Dugaboy trustee?  14        A. And, again, it would fall into the  15 buckets I just described.  16        Q. Can you – can you recall any  17 question that your sister or Dugaboy asked of  18 you concerning your compensation before  19 entering into the agreements?  20        MS. DEITSCH-PEREZ: Asked answered.  21        THE WITNESS: Again, I – it would  22 fall into the buckets I just described.  23 BY MR. MORRIS:  24        Q. Did you provide any documents to  25 your sister or to Dugaboy concerning your </p>	Page 53

<p>1        JAMES DONDERO  2 compensation before entering into the  3 agreements?  4        A. No, not that I can recall.  5        Q. Did your sister or Dugaboy ask you  6 for any documents before entering into – into  7 any of the agreements?  8        A. I do not – I do not believe so.  9        Q. Do you recall that in the ordinary  10 course of business, Highland prepared a  11 document called a Compensation and Benefits  12 Statement for each of its employees?  13       A. Yes.  14       Q. And was that prepared by the Human  15 Resources Group?  16       A. Yes.  17       Q. And was Mark Collins the head of the  18 Human Resources Group?  19       A. No.  20       Q. Who was the head of the Human  21 Resources Group?  22       A. Brian Collins.  23       Q. I apologize to Mr. Collins. Thank  24 you for the correction.  25       And Mr. Collins and his team were</p>	<p>Page 54</p> <p>1        JAMES DONDERO  2 responsible for preparing the annual  3 Compensation and Benefits Statements for  4 Highland's employees, correct?  5        A. Yes.  6        Q. And did you instruct them to do  7 that?  8        A. Not specifically.  9        Q. Okay.  10       A. They do it every year. They do it  11 every year as a matter of course, so I guess no  12 is the answer.  13       Q. Okay. So in the ordinary course of  14 business, Mr. Collins and his team would  15 prepare Compensation and Benefits Statements  16 for each of Highland's employees on an annual  17 basis, right?  18       A. Yes.  19       Q. Okay.  20       MR. MORRIS: Can we please put up  21 Exhibit 68.  22       MS. CANTY: (Complies with request.)  23  24  25</p>	<p>Page 55</p>
<p>1        JAMES DONDERO  2 (Whereupon, Exhibit 68, James  3 Dondero Compensation and Benefits  4 Statement, Bates stamped D-CNL003585,  5 marked for identification, as of this  6 date.)  7 BY MR. MORRIS:  8       Q. Do you see the document that's been  9 premarked as Exhibit 68 that's up on the  10 screen, sir?  11       A. Yup.  12       Q. And does this appear to be the form  13 of annual Compensation and Benefits Statement  14 that Mr. Collins and his team prepared on an  15 annual basis for Highland's employees?  16       A. This looks like the format, yes.  17       Q. Okay. And the Compensation and  18 Benefits Statement was intended to set forth  19 the types and the amounts of compensation each  20 employee received each year, correct?  21       A. Yes, generally.  22       Q. Okay. Did you ever disclose any  23 information on this page to Nancy or to  24 Dugaboy?  25       A. Honestly, I don't think I've ever</p>	<p>Page 56</p> <p>1        JAMES DONDERO  2 seen my award letters before.  3       Q. Okay. So you never – so then it's  4 a fair to say you never showed this letter to  5 your sister or to Dugaboy, correct?  6       A. Correct.  7       Q. Okay. Did you ever disclose to  8 Nancy or to Dugaboy the salary that's reflected  9 on this document?  10       A. I can't remember specifically beyond  11 what I've already testified.  12       Q. Did you ever describe for Nancy or  13 for Dugaboy the 2016 deferred compensation  14 award that's reflected on this document?  15       A. No. I – by the way, I think that's  16 only 20 percent vested a year. I think that's  17 a gross amount. But no, I never – I never  18 discussed that with her.  19       Q. Okay. Do you see in the  20 compensation award refers to 50,000 restricted  21 stock units of NXRT relating to your 2016  22 performance?  23       A. Yes.  24       Q. What is NXRT?  25       A. That's the REIT that Highland used</p>	<p>Page 57</p>

<p>1        JAMES DONDERO</p> <p>2 to own million shares of that series hold at 20</p> <p>3 that now trade at 70.</p> <p>4        Q. And is NexPoint REIT affiliated with</p> <p>5 NexPoint Advisors, L.P.?</p> <p>6        A. Yes.</p> <p>7        Q. And do you have an understanding of</p> <p>8 the nature of the relationship?</p> <p>9        A. Yes.</p> <p>10      Q. And what's – what's your</p> <p>11 understanding of the nature of the relationship</p> <p>12 between NexPoint REIT and NexPoint Advisors,</p> <p>13 L.P.?</p> <p>14      A. It's the external manager of the</p> <p>15 REIT.</p> <p>16      Q. Okay. Did you ever tell Nancy or</p> <p>17 Dugaboy that you had received these restricted</p> <p>18 stock units in 2016?</p> <p>19      A. No. But again, the vested amount</p> <p>20 would have probably been about \$250,000 worth</p> <p>21 at that moment.</p> <p>22      Q. And did it vest over a couple of</p> <p>23 years?</p> <p>24      A. The first couple of years is vested</p> <p>25 over five years. I think now it vests over six</p>	Page 58	Page 59
<p>1        JAMES DONDERO</p> <p>2 statement for 2017?</p> <p>3        A. Yes.</p> <p>4        Q. Did you ever disclose any of the</p> <p>5 information on this page to Nancy or to</p> <p>6 Dugaboy?</p> <p>7        A. No.</p> <p>8        Q. Did you ever disclose to Nancy or to</p> <p>9 Dugaboy that your base salary in 2017 was.</p> <p>10      2,500,024?</p> <p>11      MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13      THE WITNESS: Not specifically, no,</p> <p>14 other than the buckets we talked about</p> <p>15 earlier.</p> <p>16      Like I said earlier, I'm not sure if</p> <p>17 I have ever seen these before. But I also</p> <p>18 – until it's verified, I don't want to –</p> <p>19 everybody to assume that the base salary</p> <p>20 came a hundred percent from Highland or if</p> <p>21 it was also from some other entity.</p> <p>22 Because for the purposes of this letter,</p> <p>23 Brian Collins wouldn't have – we have</p> <p>24 numerous or several employees that are dual</p> <p>25 employees. And whether their base salary</p>	Page 60	Page 61

<p>1           JAMES DONDERO</p> <p>2 on the amount of time you spent working for</p> <p>3 each of those entities?</p> <p>4   A. I have no idea.</p> <p>5   Q. If your salary was \$500,000 from</p> <p>6 Highland in 2017 and \$2 million to NexPoint,</p> <p>7 can you – can you think of any reason why it</p> <p>8 would be allocated in that way?</p> <p>9        MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11      THE WITNESS: Cash, cash</p> <p>12 availability. I – I don't know.</p> <p>13 BY MR. MORRIS:</p> <p>14     Q. Okay. Did you devote your full time</p> <p>15 and attention to Highland Capital Management,</p> <p>16 L.P.?</p> <p>17     A. I spread my time as appropriate</p> <p>18 across a variety of entities.</p> <p>19     Q. Can you identify for me the entities</p> <p>20 that you spread your time across?</p> <p>21     A. Highland, NexPoint, HCMFA, HCRE.</p> <p>22     Q. How about Highland Management</p> <p>23 Services, Inc.?</p> <p>24     A. Yes.</p> <p>25     Q. Are there any others?</p>	Page 62	<p>1           JAMES DONDERO</p> <p>2   A. Yes.</p> <p>3   Q. Can you identify any other companies</p> <p>4 to which you devoted your time and attention?</p> <p>5   A. Not off the top of my head. I'm</p> <p>6 willing to be refreshed. But over the years</p> <p>7 there's been multiple initiatives at Highland</p> <p>8 that have come and gone and private equity</p> <p>9 companies that have come and gone and other</p> <p>10 initiatives that have come and gone.</p> <p>11   Q. Do you see the reference to the</p> <p>12 65,772 restricted stock units of the NexPoint</p> <p>13 REIT there on this document?</p> <p>14   A. Yes.</p> <p>15   Q. And was that, to the best of your</p> <p>16 recollection, the award that you were granted</p> <p>17 in connection with your 2017 performance?</p> <p>18   A. It would have been for – it would</p> <p>19 have been the prior awards at – it would have</p> <p>20 been for the prior years' awards at NFLP. And</p> <p>21 it would have been – it would have been the</p> <p>22 same five- or seven-year vesting schedule.</p> <p>23        MR. MORRIS: Now I'm looking at my</p> <p>24 phone, and I don't see, Deborah, any e-mail</p> <p>25 from your firm.</p>	Page 63
<p>1           JAMES DONDERO</p> <p>2        MS. DEITSCH-PEREZ: Yeah. On a</p> <p>3 break, I'll take a picture of it and send</p> <p>4 it to you.</p> <p>5        Do you want a break now?</p> <p>6        MR. MORRIS: I really – I really</p> <p>7 don't. And I don't know why I can't get an</p> <p>8 e-mail copy rather than a photograph. It's</p> <p>9 not going to be – it's not going to be</p> <p>10 easy to read, and you know that?</p> <p>11        MS. DEITSCH-PEREZ: It'll be</p> <p>12 perfectly fine. If you can't, let me know;</p> <p>13 and then I'll take the time to try and find</p> <p>14 it. But the fastest way to get it to you</p> <p>15 is to take a picture of it.</p> <p>16 BY MR. MORRIS:</p> <p>17     Q. Mr. Dondero, did you ever tell Nancy</p> <p>18 or Dugaboy that you had received the restricted</p> <p>19 stock units from the NexPoint REIT as reflected</p> <p>20 on this page?</p> <p>21     A. You're – you're saying the</p> <p>22 \$1.55-million number that was really 200,000</p> <p>23 vested or 300,000 vested?</p> <p>24     Q. No. I'm not talking about the</p> <p>25 value. I'm just talking about the restricted</p>	Page 64	<p>1           JAMES DONDERO</p> <p>2 units.</p> <p>3        Did you ever tell them – let's keep</p> <p>4 it – let's keep it simple, and let's make it</p> <p>5 really broad.</p> <p>6        Did you ever tell Nancy or Dugaboy</p> <p>7 that you received restricted stock units as</p> <p>8 part of your compensation?</p> <p>9     A. I – I don't remember.</p> <p>10    Q. Okay. Did you ever – because this</p> <p>11 will speed it up.</p> <p>12    Did you ever tell your expert that</p> <p>13 you received restricted stock units as part of</p> <p>14 your compensation?</p> <p>15        MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17      THE WITNESS: I don't – I don't</p> <p>18 remember.</p> <p>19 BY MR. MORRIS:</p> <p>20     Q. Did you ever direct anyone acting on</p> <p>21 your behalf to share with your expert that you</p> <p>22 had received restricted stock units as a form</p> <p>23 of compensation?</p> <p>24        MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	Page 65

<p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I not – I wasn't</p> <p>3 involved.</p> <p>4 MR. MORRIS: All right. You know,</p> <p>5 what, Deborah, let's take a break; and why</p> <p>6 don't you send me that document.</p> <p>7 It is now 3:28. Let's come back at</p> <p>8 3:40 Eastern, and let's please be on time</p> <p>9 because I'd like to try to finish this</p> <p>10 today. Thank you.</p> <p>11 THE VIDEOGRAPHER: Off the record at</p> <p>12 2:28.</p> <p>13 (Whereupon, a break was taken.)</p> <p>14 THE VIDEOGRAPHER: We are back on</p> <p>15 the record. The time is 2:43.</p> <p>16 MR. MORRIS: I received from counsel</p> <p>17 a photograph in text message form of the</p> <p>18 document that Mr. Dondero was referring to</p> <p>19 at the beginning of the deposition.</p> <p>20 I'm going to ask for that production</p> <p>21 – for the production of that document with</p> <p>22 a Bates number by the end of the day, and I</p> <p>23 hope that could be accommodated.</p> <p>24 MS. DEITSCH-PEREZ: I'm not sure –</p> <p>25 John, I'm not sure it will be by the end of</p>	Page 66	Page 67
<p>1 JAMES DONDERO</p> <p>2 to you by e-mail instead.</p> <p>3 MR. MORRIS: I'd like to proceed.</p> <p>4 You can e-mail it to me. I mean, I</p> <p>5 asked you to do that an hour ago.</p> <p>6 MS. DEITSCH-PEREZ: Well, the</p> <p>7 easiest way to do it is to send a picture</p> <p>8 is to text it; but if you give me a minute,</p> <p>9 I'll figure out how to send it by e-mail.</p> <p>10 Give me a second. Let's see.</p> <p>11 It just takes a second because it</p> <p>12 goes into my personal e-mail first if it's</p> <p>13 from my iPhone. Okay.</p> <p>14 MR. MORRIS: Can we proceed?</p> <p>15 MS. DEITSCH-PEREZ: Yeah. Give me a</p> <p>16 minute and you'll have it.</p> <p>17 Okay. You should have it in your</p> <p>18 e-mail now, John.</p> <p>19 MR. MORRIS: Thank you. All right.</p> <p>20 I'll let you know when it arrives.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Mr. Dondero, the questions now are</p> <p>23 going to be both in your individual capacity</p> <p>24 and in your capacity as the 30(b)(6) witness.</p> <p>25 Do you understand that?</p>	Page 68	Page 69
<p>1 JAMES DONDERO</p> <p>2 A. Okay.</p> <p>3 Q. Okay.</p> <p>4 A. It's either – it's either/or; it's</p> <p>5 not one?</p> <p>6 Q. No.</p> <p>7 A. Okay.</p> <p>8 Q. You contend that the Notes are</p> <p>9 subject to the – withdrawn.</p> <p>10 You contend that the Notes that are</p> <p>11 the subject of the agreements would be forgiven</p> <p>12 upon the fulfillment of certain conditions</p> <p>13 present, right?</p> <p>14 A. Right.</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form. He said "subsequent."</p> <p>17 MR. MORRIS: I apologize. Let me</p> <p>18 restate the question.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. You contend that the Notes subject</p> <p>21 to the agreement should be forgiven or would be</p> <p>22 forgiven upon the fulfillment of certain</p> <p>23 conditions subsequent, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And to the best of your knowledge,</p>		

<p>1        JAMES DONDERO</p> <p>2    none of those conditions have occurred as of</p> <p>3    today, correct?</p> <p>4    A. To the best of my knowledge, yes.</p> <p>5    Q. Okay. You're not aware of any facts</p> <p>6    showing that any of the conditions subsequent</p> <p>7    have been satisfied, fair?</p> <p>8    A. I – yeah. I wouldn't know. You</p> <p>9    would probably know. I don't know.</p> <p>10   Q. I'm only asking for your knowledge.</p> <p>11   One of the conditions subsequent was</p> <p>12   that the Notes would be forgiven if you caused</p> <p>13   Highland to sell its interest in one of three</p> <p>14   portfolio companies above cost, right?</p> <p>15   MS. DEITSCH-PEREZ: Object to the</p> <p>16   form.</p> <p>17   THE WITNESS: I – yeah. I don't</p> <p>18   know if the noun is me or Highland, but</p> <p>19   yeah.</p> <p>20 BY MR. MORRIS:</p> <p>21   Q. Okay. The portfolio companies at</p> <p>22   issue were MGM, Comerstone, and Trustway,</p> <p>23   correct?</p> <p>24   A. Yes.</p> <p>25   Q. And prior to the petition date, you</p>	Page 70	<p>1        JAMES DONDERO</p> <p>2    had the authority to sell any of those</p> <p>3    portfolio companies at any time without having</p> <p>4    to obtain approval from anyone, correct?</p> <p>5    MS. DEITSCH-PEREZ: Object to the</p> <p>6    form.</p> <p>7    THE WITNESS: Yeah. No, I can't</p> <p>8    agree with that statement.</p> <p>9 BY MR. MORRIS:</p> <p>10   Q. Why not?</p> <p>11   Who's approval did you have to get</p> <p>12   before you could sell any of those portfolio</p> <p>13   companies?</p> <p>14   A. MGM, I was one board member and I</p> <p>15   think an aggregate. When I was running</p> <p>16   Highland, we spoke for 18 percent of the</p> <p>17   equity. So I couldn't force the overall sale</p> <p>18   of the company unilaterally.</p> <p>19   There was also a shareholder's</p> <p>20   agreement in place that restricted myself and</p> <p>21   Anchorage and a couple of the large holders</p> <p>22   from selling their shares without a disclosure</p> <p>23   and approval process. That is one example.</p> <p>24   With regard to Trustway, I believe I</p> <p>25   was largely unfettered.</p>	Page 71
<p>1        JAMES DONDERO</p> <p>2    With regard to Comerstone, a</p> <p>3    majority of it – or not a majority, but a</p> <p>4    significant minority, I think, was owned by</p> <p>5    both Restoration and the Old Redeemer Fund.</p> <p>6    Q. All right. Well, let me ask you</p> <p>7    this: The conditions subsequent that are</p> <p>8    embedded in the agreements, did that relate to</p> <p>9    just Highland's interests in the portfolio</p> <p>10   companies, or did it relate to interests held</p> <p>11   by anybody else?</p> <p>12   A. It referred to a monetization in</p> <p>13   creating liquidity around Highland's interests</p> <p>14   that were large and illiquid portions of</p> <p>15   Highland's balance sheet.</p> <p>16   Q. Okay. So let me ask the question</p> <p>17   again.</p> <p>18   Prior to the petition date, did you</p> <p>19   have the authority to sell Highland's interests</p> <p>20   in any of the portfolio companies without</p> <p>21   having to obtain the authority of anybody else?</p> <p>22   MS. DEITSCH-PEREZ: Object to the</p> <p>23   form. Asked and answered.</p> <p>24   THE WITNESS: Sub – subject to my</p> <p>25   prior answer, I could speak for Highland</p>	Page 72	<p>1        JAMES DONDERO</p> <p>2    prior to the bankruptcy.</p> <p>3 BY MR. MORRIS:</p> <p>4    Q. Okay. Before entering into the</p> <p>5    agreements, did you or anybody acting on your</p> <p>6    behalf analyze the likelihood that any of the</p> <p>7    conditions subsequent would occur?</p> <p>8    A. Likelihood? Analyze? My</p> <p>9    description of them, which was my understanding</p> <p>10   of them, but my description of the assets to my</p> <p>11   sister was – to the trustee of Dugaboy was</p> <p>12   that we held them for a long time. We were</p> <p>13   working towards monetization, but there wasn't</p> <p>14   anything imminent regarding any of them in 2017</p> <p>15   or '18.</p> <p>16   Q. Well, but the actual sale is just</p> <p>17   one part of the condition subsequent, correct?</p> <p>18   The other part is that it's got to</p> <p>19   be sold above cost; is that correct?</p> <p>20   A. That is right.</p> <p>21   Q. Okay. So at the time you entered</p> <p>22   into each of your – each of the three</p> <p>23   agreements, had you done any analysis to</p> <p>24   determine whether or not any – whether</p> <p>25   Highland's interests in any of the portfolio</p>	Page 73

<p>1        JAMES DONDERO  2 companies exceeded its cost?  3        A. No, but I – yes. No, I did not.  4        Q. Did you have any understanding at  5 all as to how the value of Highland's interests  6 in MGM compared to its costs at the time you  7 entered into each of these three agreements?  8        A. No. I mean, my understanding was I  9 knew they were substantially higher, but I  10 didn't know how much higher.  11      Q. Okay. So is it fair to say that the  12 time – at the time you entered into each of  13 these agreements, you knew and understood that  14 the value of Highland's interests in MGM was  15 substantially higher than its costs?  16      A. For MGM, yes.  17      Q. Okay. Did you have an understanding  18 of the relationship between value and costs  19 concerning Comerstone at the time you entered  20 into these agreements?  21      A. My understanding it was moderately  22 higher, and Trustway was between substantially  23 and moderately and higher, I believe.  24      Q. Okay. So is it fair to say that at  25 the time you entered into each of these</p>	Page 74	<p>1        JAMES DONDERO  2 agreements, you believed that the value of  3 Highland's interests in each of the portfolio  4 companies exceeded its costs in varying  5 degrees?  6        A. Varying degrees. As a matter of  7 fact, I would adjust. Comerstone and  8 Trustway, I believe, were moderately higher  9 than their embedded costs or implied costs.  10 That was my understanding.  11      MGM was somewhat substantially. But  12 all of them with a fair amount of volatility  13 and a fair amount of illiquidity.  14      Q. Did you ever give your sister or  15 Dugaboy any information concerning how the  16 value of Highland's interests in any of the  17 portfolio companies compared to Highland's  18 costs before entering into the agreements?  19      A. Not that I recall.  20      Q. Do you have any reason to believe  21 that your sister or Dugaboy had any  22 understanding as to the likelihood that the  23 conditions subsequent would be satisfied at the  24 time the Dugaboy trustee entered into the three  25 agreements with you?</p>	Page 75
<p>1        JAMES DONDERO  2        MS. DEITSCH-PEREZ: Object to the  3 form.  4        THE WITNESS: I – I remember saying  5 it would take a few years at minimum; but  6 other than expressing time, I don't believe  7 I expressed value versus cost or the  8 questions you were asking me previously.  9 BY MR. MORRIS:  10      Q. Okay. You never showed Nancy or  11 Dugaboy any of the Promissory Notes prior to  12 entering into any of the agreements, correct?  13      A. Not that I recall.  14      Q. And you never sent copies of the  15 Promissory Notes to Nancy or Dugaboy before  16 entering into any of these agreements, correct?  17      A. Not that I recall.  18        MS. DEITSCH-PEREZ: Object to the  19 form.  20        John, you've asked these at the last  21 deposition and actually also at the first  22 day of the deposition.  23        MR. MORRIS: Thank you. He's here  24 now in his 30(b)(6) capacity. So please  25 just stop.</p>	Page 76	<p>1        JAMES DONDERO  2        You can object to the form of the  3 question. I really don't appreciate it.  4        You should follow the very professional job  5 that your colleague, Michael Aigen, did the  6 other day.  7 BY MR. MORRIS:  8        Q. Neither Nancy or Dugaboy has ever  9 asked to see copies of any of the Promissory  10 Notes before entering into any of the  11 agreements, correct?  12        MS. DEITSCH-PEREZ: Object to the  13 form.  14        THE WITNESS: I don't know.  15 BY MR. MORRIS:  16        Q. Do you have any reason to believe  17 that Nancy or Dugaboy ever saw a copy of any of  18 the Promissory Notes at issue before entering  19 into the agreements?  20        A. I don't know.  21        Q. During your discussions with Nancy  22 and Dugaboy, did you identify the Promissory  23 Notes that were going to be the subject of each  24 agreement?  25        MS. DEITSCH-PEREZ: Object to the</p>	Page 77

<p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 You know, we made an agreement that</p> <p>4 you were going to refer to Nancy as the</p> <p>5 Dugaboy trustee. Please stick to it.</p> <p>6 Otherwise, I'm going to have to object each</p> <p>7 time, and I'd rather not.</p> <p>8 MR. MORRIS: I have no problem with</p> <p>9 your objecting to the form of the question.</p> <p>10 It's the speaking that I really do object</p> <p>11 to. And I don't know why you can't control</p> <p>12 yourself.</p> <p>13 MS. DEITSCH-PEREZ: Because I</p> <p>14 hope that –</p> <p>15 MR. MORRIS: Please stop. Please</p> <p>16 stop.</p> <p>17 MS. DEITSCH-PEREZ: – by telling</p> <p>18 you this, you will listen.</p> <p>19 MR. MORRIS: Okay. Your discussion</p> <p>20 and your inability to control yourself is</p> <p>21 going to cause this deposition to go longer</p> <p>22 than it needs to, okay?</p> <p>23 MS. DEITSCH-PEREZ: No. It's your</p> <p>24 repeating questions that's going to do</p> <p>25 that.</p>	Page 78	<p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: You let me know when</p> <p>3 you're done.</p> <p>4 MS. DEITSCH-PEREZ: I'm done.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Mr. Dondero, during your discussions</p> <p>7 with the Dugaboy trustee, did you identify the</p> <p>8 Promissory Notes that were going to be the</p> <p>9 subject of each agreement?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: No, not that I recall.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Do you recall – during your</p> <p>15 discussions with the Dugaboy trustee, did you</p> <p>16 identify the maker of any of the Notes that</p> <p>17 were the subject of any of the agreements?</p> <p>18 A. You mean Highland as the maker; is</p> <p>19 that what you're saying?</p> <p>20 Q. No. I'm just asking if during your</p> <p>21 discussions with the Dugaboy trustee, you ever</p> <p>22 disclosed the name of the maker of any of the</p> <p>23 Notes that were subject to the agreements?</p> <p>24 A. She – she knew they were Notes due</p> <p>25 to Highland from various entities. So I don't</p>	Page 79
<p>1 JAMES DONDERO</p> <p>2 know what your question is. Did I identify</p> <p>3 specifically that they were Notes due to</p> <p>4 Highland? I guess the answer to that is yes,</p> <p>5 but I don't know what you're asking me.</p> <p>6 Q. I'm sorry, sir. I'll take the</p> <p>7 responsibility for that.</p> <p>8 I'm asking you if you identified who</p> <p>9 the maker of the Notes were, not who the payee</p> <p>10 was.</p> <p>11 MS. DEITSCH-PEREZ: You mean the</p> <p>12 borrowers, John?</p> <p>13 THE WITNESS: See, I don't want to</p> <p>14 get stuck in my underwear on maker/borrower</p> <p>15 nomenclature.</p> <p>16 She was aware that they were notes</p> <p>17 due to Highland from a variety of entities.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay. Did you identify any of those</p> <p>20 entities?</p> <p>21 A. I – yeah. She knew that some were</p> <p>22 Dugaboy, some were NexPoint for sure, and some</p> <p>23 were other entities.</p> <p>24 Q. So – so there were notes where</p> <p>25 Dugaboy owed the money or was the obligor or</p>	Page 80	<p>1 JAMES DONDERO</p> <p>2 was the borrower or was the maker that are</p> <p>3 subject to agreements that you entered into</p> <p>4 with the Dugaboy trustee?</p> <p>5 A. No. Wait. The Dugaboy – the</p> <p>6 Dugaboy Notes weren't subject to the</p> <p>7 forgiveness. It was the other notes that were</p> <p>8 subject to forgiveness.</p> <p>9 Q. So it's really kind of a simple</p> <p>10 question, and I'm not trying to trick you.</p> <p>11 If you think back to the</p> <p>12 conversations that you had with the Dugaboy</p> <p>13 trustee, did you identify the entity of – did</p> <p>14 you identify who the borrowers were under the</p> <p>15 Notes that were going to be subject to the</p> <p>16 agreements?</p> <p>17 A. She knew they were entities – she</p> <p>18 knew there were other related entities. She</p> <p>19 knew NexPoint for sure. She knew Services.</p> <p>20 I can't sit here as I remember – as</p> <p>21 I sit here today and remember whether or not I</p> <p>22 specifically identified HCRE or not, you know;</p> <p>23 but she knew they were related entities.</p> <p>24 Q. All of the revisions of the</p> <p>25 agreement are set forth in paragraph 82; is</p>	Page 81

<p>1 JAMES DONDERO  2 that right?  3 We could put it back up on the  4 screen if you'd like.  5 MR. MORRIS: In fact, why don't we  6 do that.  7 MS. CANTY: I'm sorry, John. 51 –  8 I mean, 50?  9 MR. MORRIS: I think it's  10 Exhibit 31, paragraph 82.  11 MS. CANTY: Oh, okay, 82. I've got  12 you.  13 MR. MORRIS: Thank you.  14 BY MR. MORRIS:  15 Q. Does – Mr. Dondero, other than  16 specifying who the portfolio companies were,  17 does paragraph 82 set forth all of the material  18 terms of each of the agreements?  19 A. I think it sets forth the conditions  20 subsequent.  21 Q. Is there any aspect of your  22 agreement – withdrawn.  23 Is there any aspect of your  24 agreements with the Dugaboy trustees that's not  25 described in this paragraph?</p>	<p>Page 82</p> <p>1 JAMES DONDERO  2 A. I don't know if it's captured in  3 there, but there was definitely a conversation,  4 discussion that if something like MGM was  5 sold – Anchorage is the largest holder almost  6 a majority in and of themselves. And if it was  7 bought or taken out at a price that we couldn't  8 control or couldn't agree with and it was lower  9 than cost or – you know, Cornerstone, again,  10 had multiple funds between our ownership and  11 control that if – if things were sold  12 beyond – without my support but sold below  13 cost – and I'm not sure that's captured in  14 that paragraph, but I think that was part of  15 the understanding, also.  16 Q. Is there any other part of the  17 understanding that's not set forth in  18 paragraph 82, Mr. Dondero?  19 A. Not that I can think of at this –  20 let me read it one more time, please.  21 Q. Take your time.  22 A. I believe that generally covers it.  23 Q. Was any provision of the agreements  24 the subject of negotiation?  25 MS. DEITSCH-PEREZ: Object to the</p>	Page 83
<p>1 JAMES DONDERO  2 form.  3 THE WITNESS: I don't believe it was  4 materially adjusted by any negotiation. It  5 was just clarified based on discussion is  6 how I would describe it.  7 BY MR. MORRIS:  8 Q. Is there any provision in the  9 agreements that was included at your sis – at  10 the Dugaboy trustee's request?  11 A. Like I said, there was discussion  12 and clarification. Not specifically that I  13 recall.  14 Q. Okay. Did the Dugaboy trustee  15 refuse to include any provision in the  16 agreement that you had proposed?  17 A. Not that I recall.  18 Q. Can you identify any provision of  19 the agreements that were the subject of a  20 counterproposal that the Dugaboy trustee made?  21 A. I remember clarification discussion  22 around, you know, three companies versus two or  23 one. I remember clarification of monetization  24 being turned to cash versus illiquid.  25 Yeah. I mean, I remember</p>	<p>Page 84</p> <p>1 JAMES DONDERO  2 discussion – I remember clarification  3 discussions like that, but I don't remember –  4 it was a long time ago. I don't remember the  5 details of anything specific like that.  6 It wasn't – it wasn't a  7 contentious, nor should it have been a  8 contentious negotiation.  9 Q. How long did – do you recall how  10 long each of the conversations lasted that led  11 to the entry of each of the three agreements?  12 A. I remember the first one being  13 longer than the second two, and then I remember  14 it being spread out periods of time. So I  15 can't – I can't – I can't put an exact  16 estimate on it.  17 Q. Okay. I'm going to shift gears.  18 MR. MORRIS: We can take that down  19 now, please.  20 MS. CANTY: (Complies with request.)  21 BY MR. MORRIS:  22 Q. Do you know of any written agreement  23 pursuant to which HCRE provided services to  24 Highland at any time?  25 MS. DEITSCH-PEREZ: Object to the</p>	Page 85

<p>1 JAMES DONDERO  2 form. Asked and answered.  3 THE WITNESS: HCRE provided  4 preferred services to. Well, the  5 participants there in HCRE are, my –  6 myself and McGraner. And, you know, we  7 both provided significant other services to  8 Highland.  9 BY MR. MORRIS:  10 Q. Okay. Is that in writing? Is there  11 a written agreement?  12 That was my question.  13 Is there a written agreement  14 pursuant to which HCRE ever provided services  15 to Highland?  16 A. I don't believe so.  17 Q. Did HCRE ever provide services to  18 Highland?  19 A. I would incorporate my last two  20 answers. Not under a written agreement, but I  21 believe myself and McGraner provided a lot of  22 services.  23 Q. And what services did you and Mr.  24 McGraner provide to Highland?  25 A. I'd say anything real estate related</p>	Page 86	<p>1 JAMES DONDERO  2 on the Highland platform McGraner would have  3 input into.  4 And then I think my – my portfolio  5 management, leadership role in Highland over  6 time is well documented.  7 Q. And how did you know if you were  8 providing services in your capacity as the  9 president of Highland or in your capacity as an  10 officer or owner of the HCRE at the time you  11 provided the services?  12 A. Never – never really thought about  13 parsing it that way.  14 Q. I appreciate that.  15 Do you know whether Highland Capital  16 Management Services ever provided services to  17 Highland?  18 A. Yeah.  19 MS. DEITSCH-PEREZ: Object to the  20 form. Asked and answered.  21 THE WITNESS: Yeah. I would – not  22 in writing. I believe the services owners  23 isn't myself and McGraner. I think it was  24 myself and Okada.  25 And I would say our portfolio and</p>	Page 87
<p>1 JAMES DONDERO  2 leadership contributions to Highland are  3 well documented.  4 BY MR. MORRIS:  5 Q. And my question didn't have anything  6 to do with any particular person. It's just  7 simply whether Highland Capital Management  8 Services ever provided any services to Highland  9 Capital Management, L.P.  10 MS. DEITSCH-PEREZ: Object to the  11 form.  12 THE WITNESS: The entities that  13 you're describing or you're asking  14 questions about don't have employees'  15 services in HCRE. They have ownership  16 individuals that I've described.  17 So I've tried the best I can to  18 answer your question and what the ownership  19 may have done for Highland.  20 But since there's no employee base  21 at either of those two companies, those  22 companies could not have directly provided  23 service to Highland other than, the last  24 thing I would bring up is the track-record  25 concept, you know, in terms of the</p>	Page 88	<p>1 JAMES DONDERO  2 performance of whatever assets are in some  3 of those start-up entities ends up being a  4 useful track record that then Highland can  5 market.  6 BY MR. MORRIS:  7 Q. Okay. How about NexPoint, did  8 NexPoint ever provide services to Highland  9 Capital Management, L.P.?  10 A. Yes. The real estate – yes. I  11 mean, can I just say yes or –  12 Q. You could. That would be really  13 helpful.  14 A. Okay. There we go.  15 Q. Can you describe the circumstances  16 for me?  17 MS. DEITSCH-PEREZ: Finally, some  18 accord between the witness and the  19 questioner.  20 BY MR. MORRIS:  21 Q. Can you describe the services for  22 me?  23 A. NexPoint has a couple of attorneys  24 that are real estate experts. We have a lot of  25 different attorneys, or we did at Highland.</p>	Page 89

<p>1 JAMES DONDERO</p> <p>2 But prior to the bankruptcy, none of the</p> <p>3 Highland attorneys were experienced in real</p> <p>4 estate.</p> <p>5 So anything that required</p> <p>6 transaction help on the Highland platform</p> <p>7 regarding real estate, the NexPoint real estate</p> <p>8 attorneys would help with.</p> <p>9 Q. Okay. Anything else?</p> <p>10 A. I'm sure there are others. That's</p> <p>11 all I can think of off the top of my head. I</p> <p>12 just wanted to give you an example.</p> <p>13 Q. I appreciate that.</p> <p>14 You're aware that Highland has sued</p> <p>15 HCMFA to collect on two notes that were signed</p> <p>16 by Frank Waterhouse in 2019 in the aggregate</p> <p>17 amount of \$7.4 million; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And we actually went through</p> <p>20 this the other day, so I don't want to belabor</p> <p>21 it if I don't have.</p> <p>22 But do you recall that we saw the</p> <p>23 incumbency certificate which identified</p> <p>24 Mr. Waterhouse as the treasurer of HCMFA as of</p> <p>25 April 2019?</p>	Page 90	<p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you recall that you</p> <p>4 signed that incumbency certify in your capacity</p> <p>5 as president of HCMFA?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. I want to talk about the first of</p> <p>11 the two Notes, the \$2.4 million Note.</p> <p>12 Do you recall that in early May</p> <p>13 2019, Highland transferred \$2.4 million to</p> <p>14 HCMFA?</p> <p>15 A. I don't remember a lot of specifics,</p> <p>16 but I know there were two Notes as you're</p> <p>17 describing.</p> <p>18 Q. Okay. And there was – and one of</p> <p>19 them – did you authorize the \$2.4-million</p> <p>20 payment?</p> <p>21 A. Yes.</p> <p>22 Q. And why did you authorize Highland</p> <p>23 to transfer \$2.4 million to HCMFA in early May</p> <p>24 2019?</p> <p>25 A. My answer's the same for both –</p>	Page 91
<p>1 JAMES DONDERO</p> <p>2 both Notes. Essentially, it's regarding the</p> <p>3 terrace start issue that we had with the</p> <p>4 Fort Worth SEC.</p> <p>5 Q. Did you give anyone instructions</p> <p>6 concerning the transfer of the \$2.4 million?</p> <p>7 A. I instructed them to make the</p> <p>8 transfer, or I was involved in the – involved</p> <p>9 in approving the transfer.</p> <p>10 Q. And who did you instruct to make the</p> <p>11 transfer of \$2.4 million?</p> <p>12 A. Yeah. It would have been Frank.</p> <p>13 Q. Do you have a recollection of</p> <p>14 instructing Frank to transfer \$2.4 million?</p> <p>15 A. Yeah. Generally, yes.</p> <p>16 Q. Do you have a recollection of what</p> <p>17 instructions you gave him?</p> <p>18 A. It was well-known. It was a very</p> <p>19 disruptive – the whole thing was very</p> <p>20 disruptive at Highland and HCMFA. Everybody</p> <p>21 was aware of it. The settlement, the</p> <p>22 negotiations around the settlement, the</p> <p>23 give-and-take, the amounts changed over time.</p> <p>24 Everybody was aware of it in senior</p> <p>25 management, including myself. And putting the</p>	Page 92	<p>1 JAMES DONDERO</p> <p>2 money into HCMFA to settle it was something I</p> <p>3 was aware of and authorized and a critical</p> <p>4 piece of putting that issue to bed.</p> <p>5 Q. Okay. I'm just asking you if you</p> <p>6 recall what instructions you gave to</p> <p>7 Mr. Waterhouse concerning the transfer if you</p> <p>8 recall?</p> <p>9 A. No. I mean, like I said, I</p> <p>10 authorized the movement of the money.</p> <p>11 Q. Okay. Were you aware at that time</p> <p>12 that the transfer of the \$2.4 million from</p> <p>13 Highland to HCMFA was booked as a loan on both</p> <p>14 Highland and HCMFA's books and records?</p> <p>15 A. I was not aware at the time.</p> <p>16 Q. Okay.</p> <p>17 MR. MORRIS: Can we put up</p> <p>18 Exhibit 53 please.</p> <p>19 THE VIDEOGRAPHER: Counsel, I will</p> <p>20 need a media break in about five minutes.</p> <p>21 MR. MORRIS: Thank you very much.</p> <p>22 Why don't we take that right now before I</p> <p>23 begin my examination on this document. How</p> <p>24 long do you need?</p> <p>25 THE VIDEOGRAPHER: It will just be a</p>	Page 93

<p>1 JAMES DONDERO</p> <p>2 minute, but this is the end of Media Number</p> <p>3 1.</p> <p>4 MR. MORRIS: Okay.</p> <p>5 THE VIDEOGRAPHER: We are off the</p> <p>6 record at 3:21.</p> <p>7 MR. MORRIS: We are off the record,</p> <p>8 but don't go anywhere.</p> <p>9 MS. DEITSCH-PEREZ: What?</p> <p>10 MR. MORRIS: We're not taking a</p> <p>11 break.</p> <p>12 THE VIDEOGRAPHER: Yep. This will</p> <p>13 just take a minute. Please stand by.</p> <p>14 MR. MORRIS: Thank you.</p> <p>15 THE VIDEOGRAPHER: All right.</p> <p>16 Suzanne, are you good to go?</p> <p>17 THE COURT REPORTER: I'm good.</p> <p>18 THE VIDEOGRAPHER: This is the</p> <p>19 beginning of Media Number 2, Volume II</p> <p>20 [sic] in the deposition of James Dondero.</p> <p>21 We are back on the record at 3:22.</p> <p>22 MR. MORRIS: All right. Can we</p> <p>23 please put up Exhibit 53.</p> <p>24 MS. CANTY: Yeah. Just one second.</p> <p>25 My computer went haywire. Give me one</p>	Page 94	<p>1 JAMES DONDERO</p> <p>2 minute.</p> <p>3 (Whereupon, Exhibit 53, E-mail</p> <p>4 correspondence, Bates stamped D-CNL003768</p> <p>5 through D-CNL003770, marked for</p> <p>6 identification, as of this date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. So Mr. Dondero, do you see</p> <p>9 what's on the screen here?</p> <p>10 Mr. Dondero?</p> <p>11 MR. MORRIS: Deborah?</p> <p>12 Apparently Mr. Dondero has left the</p> <p>13 seat.</p> <p>14 THE VIDEOGRAPHER: Would you like to</p> <p>15 go off record?</p> <p>16 MR. MORRIS: No.</p> <p>17 THE VIDEOGRAPHER: Okay. We'll stay</p> <p>18 on the record.</p> <p>19 MR. MORRIS: The video is still</p> <p>20 rolling, right, sir?</p> <p>21 THE VIDEOGRAPHER: Yes, it is.</p> <p>22 MR. MORRIS: Thank you.</p> <p>23 Hi, Michael. If you're – if you're</p> <p>24 able, can you reach out to your partner?</p> <p>25 MR. AIGEN: I had texted her. I</p>	Page 95
<p>1 JAMES DONDERO</p> <p>2 will try to call her, too; but I did text</p> <p>3 her a couple of minutes ago. I will try to</p> <p>4 reach out again. Hold on.</p> <p>5 MS. DEITSCH-PEREZ: I'm back. I'm</p> <p>6 lucky in that the ladies room is directly</p> <p>7 across from the conference room.</p> <p>8 Mr. Dondero's down at the other end</p> <p>9 of the floor, so he will be back shortly.</p> <p>10 And I just saw your note, John. The</p> <p>11 – the videographer said he needed a break;</p> <p>12 and you said, okay, then let's take our</p> <p>13 break now. So we took a restroom break.</p> <p>14 MR. MORRIS: I think everybody on</p> <p>15 the phone – and there's a transcript of it</p> <p>16 – knows that I specifically said, how long</p> <p>17 do you need. He said one minute, and I</p> <p>18 said don't go anywhere.</p> <p>19 This is your time, not mine.</p> <p>20 MS. DEITSCH-PEREZ: Prior to that,</p> <p>21 you said, let's take the break now.</p> <p>22 MR. MORRIS: Yeah, to allow him to</p> <p>23 change the tape. I'm not going to question</p> <p>24 anybody on the call, but I'm 100 percent</p> <p>25 certain that they would all tell you – and</p>	Page 96	<p>1 JAMES DONDERO</p> <p>2 the record will reflect, I specifically</p> <p>3 said do not leave.</p> <p>4 MS. DEITSCH-PEREZ: Okay.</p> <p>5 Mr. Dondero is back.</p> <p>6 You have to turn – turn the video</p> <p>7 on.</p> <p>8 THE WITNESS: I'm back.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. All right. Do you see on the screen</p> <p>11 there's a document that's been marked as</p> <p>12 Exhibit 53?</p> <p>13 A. Yup.</p> <p>14 Q. Do you see there's an e-mail string</p> <p>15 dated May 2, 2019?</p> <p>16 A. Yes.</p> <p>17 Q. And do you see that Mr. Waterhouse</p> <p>18 has – if you look at the second to the top,</p> <p>19 Mr. Waterhouse's e-mail is forwarding a</p> <p>20 spreadsheet to David Klos and Kristin Hendrix</p> <p>21 that he described as, quote, "The support for</p> <p>22 the payment to GAF by HCMFA?</p> <p>23 A. Yes.</p> <p>24 Q. What's GAF?</p> <p>25 A. That's the fund itself that owned</p>	Page 97

<p>1        JAMES DONDERO</p> <p>2 the TerreStar investment. The SEC wanted, I</p> <p>3 believe, some payment to go to them; but they</p> <p>4 all, meaning the SEC, and the SEC wanted some</p> <p>5 payment to go to the fund itself for the</p> <p>6 benefit of the investors.</p> <p>7        Q. Okay.</p> <p>8        MR. MORRIS: Can we can to the chart</p> <p>9 that's attached.</p> <p>10      MS. CANTY: (Complies with request.)</p> <p>11 BY MR. MORRIS:</p> <p>12      Q. Have you ever seen this chart</p> <p>13 before, sir?</p> <p>14      A. I don't believe so specifically, but</p> <p>15 I understand what it is.</p> <p>16      Q. And is it your understanding, based</p> <p>17 on this chart, that the loss to the fund was</p> <p>18 \$6,068,851?</p> <p>19      MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21      THE WITNESS: Yes.</p> <p>22 BY MR. MORRIS:</p> <p>23      Q. And there's – there's a column</p> <p>24 there that's lost to fund.</p> <p>25      Do you see that?</p>	Page 98	<p>1        JAMES DONDERO</p> <p>2        A. Yes.</p> <p>3        Q. And is it – is it consistent with</p> <p>4 your recollection that the estimated loss of</p> <p>5 the fund or to the fund was approximately</p> <p>6 \$6 million?</p> <p>7        A. Yes. There is approximately –</p> <p>8 there's some other small numbers moving around,</p> <p>9 but yes.</p> <p>10      Q. Okay. And do you recall that HCMFA</p> <p>11 informed the SEC that HCMFA would make the fund</p> <p>12 whole by paying it an amount of money equal to</p> <p>13 the loss?</p> <p>14      A. Yes.</p> <p>15      Q. And, in fact, HCMFA paid the fund</p> <p>16 approximately \$6 million in connection with the</p> <p>17 losses sustained as a result of the NAV error,</p> <p>18 correct?</p> <p>19      A. I don't know details like that.</p> <p>20      Q. So you're not – you're not aware of</p> <p>21 the fact that HCMFA paid to the fund</p> <p>22 approximately \$6 million in May of 2019?</p> <p>23      A. Approximately six or approximately</p> <p>24 seven. I – I don't know. Whatever the</p> <p>25 agreement was with the SEC to be paid to them</p>	Page 99
<p>1        JAMES DONDERO</p> <p>2 or to the fund or whatever, I – I have all</p> <p>3 faith and confidence we complied with; but I</p> <p>4 don't – I don't know the exact numbers. I'm</p> <p>5 not aware of the exact numbers.</p> <p>6        Q. Do you understand that this analysis</p> <p>7 shows how HCMFA was going to finance the</p> <p>8 payment to the fund as a result of the NAV</p> <p>9 error?</p> <p>10      MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12      THE WITNESS: I'm sorry. Could you</p> <p>13 repeat that question again?</p> <p>14 BY MR. MORRIS:</p> <p>15      Q. Sure. Do you understand that</p> <p>16 this – that this chart here sets forth the</p> <p>17 manner in which HCMFA is going to fund the</p> <p>18 payment that it was making to GAF on account of</p> <p>19 the NAV error?</p> <p>20      A. I would call it more of a</p> <p>21 calculation on where the amounts are coming</p> <p>22 from. It doesn't appear to me that this is a</p> <p>23 funding statement.</p> <p>24      Q. Okay. I appreciate that.</p> <p>25      So – so your interpretation of this</p>	Page 100	<p>1        JAMES DONDERO</p> <p>2 is that this shows the sources of money that</p> <p>3 were going to be used to make the payment, is</p> <p>4 that fair?</p> <p>5        MS. DEITSCH-PEREZ: Objection to the</p> <p>6 form.</p> <p>7        THE WITNESS: Yeah. I think it's a</p> <p>8 reconciliation between the insurance, some</p> <p>9 forgiveness of fees, and then additional</p> <p>10 monies that are necessary.</p> <p>11 BY MR. MORRIS:</p> <p>12      Q. Okay. And –</p> <p>13      A. Yeah. Go ahead.</p> <p>14      Q. Did HCMFA file an insurance claim in</p> <p>15 connection with the NAV error?</p> <p>16      A. I believe they did get – I believe</p> <p>17 they did, and I believe they did get paid some</p> <p>18 insurance.</p> <p>19      Q. And – and if we look at the totals</p> <p>20 column in the right, did HCMFA receive, to the</p> <p>21 best of your recollection, approximately</p> <p>22 \$5 million from insurance?</p> <p>23      A. Yes. I think we should work – I</p> <p>24 think we should work from that column –</p> <p>25      Q. Okay. So let's –</p>	Page 101

<p>1        JAMES DONDERO</p> <p>2        A. – versus the other column, yeah.</p> <p>3        Q. I apologize, Mr. Dondero.</p> <p>4        So if we look at the last column,</p> <p>5        the total, does that comport with your</p> <p>6        recollection that HCMFA paid GAF approximately</p> <p>7        \$7.44 million in May of 2019 on account of the</p> <p>8        NAV error?</p> <p>9        A. I think it's more than that, and I</p> <p>10      think it's also the 375 below that.</p> <p>11      Q. Okay.</p> <p>12      A. And then I – yeah, definitely those</p> <p>13      two numbers in aggregate. I don't know if it's</p> <p>14      any others.</p> <p>15      Q. Okay. And did, to the best of your</p> <p>16      recollection, HCMFA make an insurance claim on</p> <p>17      which it received almost \$5 million as a source</p> <p>18      of funding for the payment that was due to GAF?</p> <p>19      A. Yes.</p> <p>20      Q. Are you familiar with that insurance</p> <p>21      claim?</p> <p>22      A. No.</p> <p>23      Q. Do you know if the insurance claim</p> <p>24      made any mention of Highland?</p> <p>25      A. I have no idea. I have no idea.</p>	Page 102	Page 103
<p>1        JAMES DONDERO</p> <p>2        \$2.4 million the amount of money that HCMFA</p> <p>3        needed in order to fully fund the payment to</p> <p>4        GAF?</p> <p>5        A. And I don't want to mince small</p> <p>6        numbers; but to the extent that they gave up</p> <p>7        their management fees also, like that 1939 or</p> <p>8        the 39 above that – and I don't know what that</p> <p>9        47 is above that – those are management fees</p> <p>10      that would have paid salaries and expenses at</p> <p>11      HCMFA also.</p> <p>12      So to the extent they gave up those</p> <p>13      items as part of the settlement, then HCMFA</p> <p>14      would have needed more money than even the 2.4</p> <p>15      that came from Highland.</p> <p>16      Q. Do you know if HCMFA ever informed</p> <p>17      the SEC that Highland was responsible for the</p> <p>18      NAV error?</p> <p>19      A. I – I don't know. We wouldn't have</p> <p>20      hidden it if they would have asked. My</p> <p>21      experience with the SEC is they identify the</p> <p>22      advisor; and who the advisor picks for vendors</p> <p>23      the advisor's responsible for.</p> <p>24      MR. MORRIS: I move to strike</p> <p>25      everything after "I don't know."</p>	Page 104	Page 105
<p>1        JAMES DONDERO</p> <p>2        BY MR. MORRIS:</p> <p>3        Q. Did you ever direct anyone to inform</p> <p>4        the SEC that Highland was responsible for the</p> <p>5        NAV error?</p> <p>6        A. No, not that I recall.</p> <p>7        Q. Do you know if anybody acting on</p> <p>8        behalf of HCMFA ever informed the SEC that</p> <p>9        Highland was responsible for the NAV error?</p> <p>10      A. I don't know.</p> <p>11      Q. Do you know if HCMFA ever informed</p> <p>12      GAF that Highland was responsible for the NAV</p> <p>13      error?</p> <p>14      A. Yes.</p> <p>15      Q. And is that reflected in writing</p> <p>16      anywhere?</p> <p>17      A. Yes. Numerous places.</p> <p>18      Q. And what writing would that be</p> <p>19      reflected in?</p> <p>20      A. The board minutes. There were</p> <p>21      conversations every board meeting for over a</p> <p>22      year. The retail board represents GAF. They</p> <p>23      were well aware of the subadvisory agreements,</p> <p>24      and they were well aware that all the staff</p> <p>25      regarding valuation were housed at Highland;</p>		

<p>1 JAMES DONDERO</p> <p>2 all the valuation activities were performed by</p> <p>3 Highland. And GAF and HCMFA relied on</p> <p>4 Highland, and it was a material part of board</p> <p>5 conversations for over a year.</p> <p>6 MR. MORRIS: Okay. I move to</p> <p>7 strike.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. I'm asking you just about writings,</p> <p>10 sir.</p> <p>11 Can you identify –</p> <p>12 A. No, no, no. I'm not – I'm not</p> <p>13 going to – I'm not going to allow that strike,</p> <p>14 or I'm not answering anymore questions.</p> <p>15 Q. Well, the judge will be the</p> <p>16 determiner of that. So I'd like you to answer</p> <p>17 my question.</p> <p>18 Is there any – I don't want to know</p> <p>19 about board meetings.</p> <p>20 Is there anything in writing that</p> <p>21 HCMFA provided to GAF that specifically stated</p> <p>22 that Highland and not HCMFA was responsible for</p> <p>23 the NAV error?</p> <p>24 MS. DEITSCH-PEREZ: Asked and</p> <p>25 answered.</p>	Page 106	Page 107
<p>1 JAMES DONDERO</p> <p>2 informed the Corporate Accounting Group that</p> <p>3 this transaction was a, quote, "New inter</p> <p>4 co-loan?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that he asked</p> <p>7 Christian – Kristin or Hayley to prepare a</p> <p>8 Promissory Note for discussion?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Are you aware in May 2019,</p> <p>11 Frank Waterhouse was included in the e-mail</p> <p>12 string identified as Corporate Accounting?</p> <p>13 A. I do not have that awareness.</p> <p>14 Q. Okay. Do you see at the top</p> <p>15 Ms. Hendrix – Ms. Hendrix's response to</p> <p>16 Mr. Klos's e-mail and attaches a copy of a</p> <p>17 Promissory Note?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: Can we just go to the</p> <p>21 attachment, please.</p> <p>22 MS. CANTY: (Complies with request.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Do you see that that is a Promissory</p> <p>25 Note dated May 2, 2019, in the amount of</p>	Page 108	Page 109

<p>1           JAMES DONDERO</p> <p>2 instructed to be paid to HCMFA by Highland in</p> <p>3 May of 2019, do you recall when you first</p> <p>4 learned that that was booked as a loan?</p> <p>5    A. I believe just generally as part of</p> <p>6 this litigation, not before then.</p> <p>7    Q. Are you aware that the Corporate</p> <p>8 Accounting Group created a daily list of wire</p> <p>9 transfers that were being made on behalf of</p> <p>10 Highland and its affiliates?</p> <p>11   A. Not – no, not specifically.</p> <p>12   Q. Okay. So since you did not know</p> <p>13 that the \$2.4 million transfer had been booked</p> <p>14 as a loan, is it fair to say that you never</p> <p>15 told anybody prior to the commencement of this</p> <p>16 litigation that the transaction should not have</p> <p>17 been booked as a loan?</p> <p>18   A. I had no conversations either way</p> <p>19 prior to this litigation regarding the booking</p> <p>20 of the 2.4 million.</p> <p>21   Q. Did you ever take any steps to try</p> <p>22 to determine how Highland and HCMFA accounted</p> <p>23 for the \$2.4 million that you instructed to be</p> <p>24 transferred from Highland to HCMFA in early</p> <p>25 May 2019?</p>	Page 110	Page 111
<p>1           JAMES DONDERO</p> <p>2    A. Yes, generally.</p> <p>3    Q. Okay. Why did you authorize</p> <p>4 Highland to transfer \$5 million to HCMFA in</p> <p>5 early 2019?</p> <p>6    A. It was part of the overall</p> <p>7 resolution of the TerreStar situation.</p> <p>8    Q. Do you recall that HCMFA paid</p> <p>9 something called a consent fee equal to</p> <p>10 \$5 million in early May 2019?</p> <p>11   A. Well, like I said, I don't recall</p> <p>12 the exact amounts or the exact amounts net of</p> <p>13 insurance; but my recollection it was to</p> <p>14 resolve that.</p> <p>15   Q. Do you know – do you know – did –</p> <p>16 let's real simple.</p> <p>17   Did – did HCMFA pay a consent fee</p> <p>18 in May of 2019?</p> <p>19   A. I – I don't recall.</p> <p>20   Q. Do you know what a consent fee is?</p> <p>21   A. Yes.</p> <p>22   Q. What's a consent fee?</p> <p>23   A. It's a – a fee to encourage</p> <p>24 shareholder vote on something or shareholder</p> <p>25 restitution on something, typically.</p>	Page 112	Page 113

<p>1 JAMES DONDERO</p> <p>2 THE WITNESS: My answer would be it</p> <p>3 depends.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Do you recall whether Highland –</p> <p>6 withdrawn.</p> <p>7 Do you recall whether HCMFA was</p> <p>8 required to make – to make a – to pay a</p> <p>9 consent fee at any time in 2019?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you recall ever believing that</p> <p>12 HCMFA paid a consent fee because of something</p> <p>13 that – because of a mistake that Highland</p> <p>14 made?</p> <p>15 A. It could be. I don't know.</p> <p>16 Q. I'm just asking if you had a</p> <p>17 recollection?</p> <p>18 A. I don't have a recollection.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: To the videographer, I</p> <p>21 think Mr. Dondero's screen has frozen.</p> <p>22 MS. DEITSCH-PEREZ: John, your</p> <p>23 screen is frozen, too.</p> <p>24 MR. MORRIS: I'm –</p> <p>25 MS. DEITSCH-PEREZ: I'm also – hang</p>	Page 114	Page 115
<p>1 JAMES DONDERO</p> <p>2 Can somebody help Mr. Dondero and</p> <p>3 get his audio feed fixed?</p> <p>4 Thank you, sir.</p> <p>5 MS. DEITSCH-PEREZ: Does this make a</p> <p>6 difference?</p> <p>7 MR. MORRIS: It sure does.</p> <p>8 THE WITNESS: Hello, hello.</p> <p>9 THE MORRIS: Thank you. All right.</p> <p>10 Let's try and – let's try and finish this</p> <p>11 up.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Are you ready, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Were you aware in May 2019 that the</p> <p>16 \$5-million transfer from Highland to HCMFA was</p> <p>17 booked as a loan?</p> <p>18 A. No.</p> <p>19 MR. MORRIS: Can we put up</p> <p>20 Exhibit 56, please.</p> <p>21 MS. CANTY: (Complies with request.)</p> <p>22 (Whereupon, Exhibit 56, E-mail</p> <p>23 correspondence, Bates stamped D-CNL003763,</p> <p>24 marked for identification, as of this</p> <p>25 date.)</p>	Page 116	Page 117

<p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. Do you see there's a</p> <p>4 parenthetical in the first sentence that says,</p> <p>5 "(4.4M should be coming in from Jim soon)"?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what that refers to?</p> <p>8 A. My – my educated – boy. My</p> <p>9 educted speculation is that Highland didn't</p> <p>10 have enough cash, so I probably put four into</p> <p>11 Highland for Highland to send to HCMFA. That's</p> <p>12 my educated guess; but otherwise, I don't know</p> <p>13 specifically.</p> <p>14 Q. And do you recall that you had taken</p> <p>15 out a loan from Highland earlier in the year,</p> <p>16 and this payment was credited against the</p> <p>17 principal and interest then due on that Note?</p> <p>18 A. I don't have specific awareness.</p> <p>19 That would make sense.</p> <p>20 Q. Okay.</p> <p>21 A. Versus – versus creating a new loan</p> <p>22 or something.</p> <p>23 Q. Okay.</p> <p>24 MR. MORRIS: Let's go to Exhibit 57,</p> <p>25 please.</p>	Page 118	Page 119
<p>1 JAMES DONDERO</p> <p>2 Q. And did you see this for the first</p> <p>3 time when I showed it to you late last week?</p> <p>4 A. Yes.</p> <p>5 Q. And did you learn about the loan</p> <p>6 from Highland to HCMFA for the first time after</p> <p>7 the litigation was commenced?</p> <p>8 A. That's the first time I remember.</p> <p>9 Q. And did you learn that Highland and</p> <p>10 HCMFA had booked the \$5-million transfer in May</p> <p>11 of 2019 as a loan for the first time after the</p> <p>12 litigation was commenced?</p> <p>13 A. That is my recollection.</p> <p>14 Q. Okay. We talked at your first</p> <p>15 deposition in May about Highland's audited</p> <p>16 financial statements.</p> <p>17 I don't know if you have a</p> <p>18 recollection of that. Do you?</p> <p>19 A. Just generally, yes.</p> <p>20 Q. Okay. I just want to focus on these</p> <p>21 two notes.</p> <p>22 For this portion of the deposition,</p> <p>23 we are questioning you in your individual</p> <p>24 capacity, and you're only focused on these two</p> <p>25 notes from HCMFA to Highland, okay?</p>	Page 120	Page 121

<p>1 JAMES DONDERO</p> <p>2 Q. Okay. Did you learn after the</p> <p>3 litigation that these notes had been carried as</p> <p>4 liabilities on HCMFA's balance sheets?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did you ever review</p> <p>7 Highland's audited financial statements?</p> <p>8 A. Not with any specificity.</p> <p>9 Q. Are you aware that Highland gave</p> <p>10 these Promissory Notes to PWC as part of the</p> <p>11 audit process?</p> <p>12 A. I would assume they did, but I don't</p> <p>13 have specific awareness.</p> <p>14 Q. Okay. And why do you assume that</p> <p>15 they did?</p> <p>16 A. As part of complete financials to</p> <p>17 the extent that they were made by Kristin or</p> <p>18 whoever, properly or improperly. Once they</p> <p>19 existed, they would have been part of a</p> <p>20 complete audit.</p> <p>21 Q. Are you aware that these two</p> <p>22 Promissory Notes were disclosed in Highland's</p> <p>23 audited financial statements for the period</p> <p>24 ending December 31, 2018, as subsequent events?</p> <p>25 A. No.</p>	Page 122	Page 123
<p>1 JAMES DONDERO</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: Can we go to page 252</p> <p>4 of the document? It's got to be – let's</p> <p>5 see the Bates.</p> <p>6 MS. CANTY: (Complies with request.)</p> <p>7 MR. MORRIS: Yeah. Right there.</p> <p>8 Okay. Scroll just to the page before so we</p> <p>9 can see the heading.</p> <p>10 MS. CANTY: (Complies with request.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Do you see that this is the</p> <p>13 section of the audited financials entitled</p> <p>14 "Subsequent Events"?</p> <p>15 A. Yes.</p> <p>16 Q. And is it your understanding that</p> <p>17 the auditors include in subsequent events</p> <p>18 material transactions THAT occur between the</p> <p>19 end of the fiscal period in which had audit has</p> <p>20 been conducted and the date that the auditors</p> <p>21 sign off?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So if you look at page 39,</p> <p>24 the next to the last paragraph, do you see, it</p> <p>25 says, quote, "Over the course of 2019 through</p>	Page 124	Page 125

<p>1 JAMES DONDERO  2 that was responsible for working with the  3 auditors in the preparation of the audit  4 reports?  5 A. Yeah, yes.  6 Q. Do you know what group that was?  7 A. I believe there's a financial  8 reporting group that reports to Frank that  9 handles this interaction.  10 Q. Are you familiar – are you aware of  11 what role Mr. Waterhouse plays, if any, in  12 connection with Highland's annual audit, at  13 least during the time that you were serving as  14 president?  15 A. I think he – he coordinates – I  16 think he has to sign off on many aspects of it,  17 you know, as a C suite executive. So he's  18 responsible for, you know, completeness,  19 integrity, et cetera.  20 And there's a certain amount of  21 reliance that PWC puts on it; but my  22 understanding is audits for the last bunch of  23 years has been pretty much a hundred percent  24 sampling and verification.  25 Q. High- –</p>	<p>Page 126</p> <p>1 JAMES DONDERO  2 A. – PWC.  3 Q. I apologize, sir.  4 Highland was the sole source of  5 information that's contained in its audit  6 reports, right, to the best of your knowledge?  7 A. No. No. When I – the last thing I  8 said a minute ago about I believe it was a  9 hundred percent sampling and verification, I  10 think the audit firm ties back to vendors,  11 credit agreements, source documents, et cetera.  12 Highland is not the only source of  13 this information.  14 Q. You were also responsible for the  15 audit report; is that fair?  16 A. Yes.  17 Q. And that's because you signed a  18 management representation letter, correct?  19 A. Yes.  20 Q. And do you have an understanding of  21 what management a representation letter is?  22 MS. DEITSCH-PEREZ: Object to the  23 form. I think you've asked this in each  24 day of the deposition.  25 MR. MORRIS: Okay. Just trying to</p>	<p>Page 127</p>
<p>1 JAMES DONDERO  2 get some background here.  3 THE WITNESS: Yes, I have a general  4 understanding. They very from accounting  5 firm to accounting firm, and they very  6 depending upon the type of audit. But I  7 have a general understanding of them, yes.  8 BY MR. MORRIS:  9 Q. Okay. And you're – are you aware  10 that HCMFA had its financial statements audited  11 by PWC as well?  12 A. Yes.  13 Q. Are you aware that HCMFA disclosed  14 the May 2019 Notes in its own audited financial  15 statements?  16 A. I assume so.  17 Q. Have you ever –  18 A. I don't have specific – I don't  19 have specific awareness, but it's not reported  20 here but not on HCMFA; so I assume they are,  21 yes.  22 Q. Okay. And do you sign Management  23 Representation Letters for HCMFA's audit as you  24 do for Highland?  25 A. I believe so.</p>	<p>Page 128</p> <p>1 JAMES DONDERO  2 Q. Have you ever told anyone that  3 HCMFA's audited financial statements for the  4 period ending December 31, 2018, inaccurately  5 described the \$7.4 million transferred from  6 Highland to HCMFA as loans?  7 MS. DEITSCH-PEREZ: Object to the  8 form.  9 THE WITNESS: No, I have not; but I  10 haven't been involved in any of the audit  11 functions for quite some time.  12 I don't think I was involved or  13 signed Management Representation Letters  14 for any period covered by this.  15 BY MR. MORRIS:  16 Q. Okay. Let's switch gears.  17 The advisors have annual contracts  18 to manage certain retail funds, correct?  19 A. Yes.  20 Q. And the retail funds have a board  21 that decides whether to renew the contracts  22 with the advisors, correct?  23 A. Yes.  24 Q. And in connection with the annual  25 renewal, the advisors provide information to</p>	<p>Page 129</p>

<p>1 JAMES DONDERO</p> <p>2 the retail board, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you've participated in meetings</p> <p>5 with the retail board concerning the renewal</p> <p>6 process, correct?</p> <p>7 A. Sometimes.</p> <p>8 Q. Okay. Do you recall that in late</p> <p>9 2020, the advisors provided a written memo to</p> <p>10 the retail board in connection with the annual</p> <p>11 15-C review process?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: Can we put up</p> <p>15 Exhibit 59, please.</p> <p>16 MS. CANTY: (Complies with request.)</p> <p>17 (Whereupon, Exhibit 59, Memorandum,</p> <p>18 dated October 23, 2020, Bates stamped</p> <p>19 HCMFAS 000025 through HCMFAS 000031, marked</p> <p>20 for identification, as of this date.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you see that this is a memo dated</p> <p>23 October 23, 2020?</p> <p>24 A. Yes.</p> <p>25 Q. Is it fair to describe this memo as</p>	Page 130	Page 131
<p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Just stop there for a</p> <p>3 second.</p> <p>4 MS. CANTY: (Complies with request.)</p> <p>5 THE WITNESS: Okay. Keep going.</p> <p>6 MS. CANTY: (Complies with request.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Just – I'm going to ask you</p> <p>9 questions about Section 2 just so you know, but</p> <p>10 you're welcome to view any portion of this</p> <p>11 document as you believe necessary.</p> <p>12 MS. CANTY: I also put it in the</p> <p>13 chat, John.</p> <p>14 MR. MORRIS: Thank you.</p> <p>15 THE WITNESS: I see it.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. So –</p> <p>18 A. Can you go – let's keep going.</p> <p>19 Just I'll quickly read the whole thing.</p> <p>20 Q. No problem.</p> <p>21 A. That's it. Okay. Got it. All</p> <p>22 right.</p> <p>23 Q. Okay. So now that you've seen the</p> <p>24 substance of the memo, do you recall if you saw</p> <p>25 it before today?</p>	Page 132	Page 133

<p>1        JAMES DONDERO  2 and accounting support for all the funds listed  3 in the "to" section here.  4        As I said earlier, NexPoint has a  5 couple accountants – I mean – I'm sorry – a  6 couple lawyers who do real estate transactions  7 stuff. Their – their title – their title  8 meaning DC's counsel, DC Sauter, who's the most  9 senior attorney there, it might be general  10 counsel; but he only does real estate  11 transactions.  12       The legal dependents of NexPoint and  13 HCMFA was on the Shared Services Agreement and  14 the Highland attorneys that performed those  15 Shared Services Agreements.  16       Q. Okay. Did anybody acting on behalf  17 of the advisors review and approve this memo  18 before it was sent to the retail funds?  19       A. I don't know.  20       Q. Is it your practice as the president  21 of the advisors to have memos sent to the  22 retail board without anybody reviewing and  23 approving the memos on behalf of the advisors?  24       MS. DEITSCH-PEREZ: Object to the  25 form.</p>	Page 134	<p>1        JAMES DONDERO  2        THE WITNESS: I'm not aware of what  3 standard practice was or wasn't; but again,  4 the infrastructure for something like this  5 would have been only at Highland.  6        HCMFA only had portfolio managers  7 and analysts as employees, and NexPoint  8 pretty much only had portfolio managers and  9 analysts as employees.  10       The staff functions were at  11 Highland, and Highland serviced the funds  12 via a Shared Services Agreement that was  13 still in place as of the date of this memo.  14       MR. MORRIS: Okay. Can we go down  15 to Section 2, please.  16       MS. CANTY: (Complies with request.)  17 BY MR. MORRIS:  18       Q. Looking at Section 2, do you see  19 that there's a question as to whether there are  20 any material amounts currently payable or due  21 in the future EG notes to –  22       A. Yes.  23       Q. – the Highland by HCMFA or  24 NexPoint?  25       A. Yes.</p>	Page 135
<p>1        JAMES DONDERO  2        Q. Okay. In the 53 or 54 weeks since  3 this memo as was sent, do you know if it has  4 been amended or modified in any way?  5        A. I believe there was similar memos  6 like this for this year's annual – for the  7 2021 renewal, but I do not have – I've not  8 seen those either; and I don't know how this  9 answer would have changed.  10       Q. Okay. But at least as of  11 October 23, 2020, this is the response that the  12 advisors gave to the retail board in response  13 to Question Number 2, right?  14       MS. DEITSCH-PEREZ: Object to the  15 form.  16       THE WITNESS: As far – as far as I  17 know, having seen it here for the first  18 time and not knowing whether this was the  19 final or if there were subsequent letters  20 and not knowing what the 2021 letter looks  21 like, on its surface that appears so; but I  22 have no awareness.  23 BY MR. MORRIS:  24       Q. Okay. And just I'll represent to  25 you, Mr. Dondero, that I obtained this letter</p>	Page 136	<p>1        JAMES DONDERO  2        from counsel to the advisors in response to my  3 specific request for the October 2020, 15-C  4 response. So that's how – that's how I got it  5 just so you know.  6       A. Okay.  7       Q. So – so were you aware in October  8 of 2020 that NexPoint informed the retail board  9 that as of June 30, 2020, it owed Highland and  10 its affiliates approximately \$23.7 million?  11       MS. DEITSCH-PEREZ: Object to the  12 form.  13       THE WITNESS: I was not aware.  14 BY MR. MORRIS:  15       Q. Does that amount comport with your  16 recollection as to what was outstanding on the  17 May 31, 2017, note that NexPoint gave to  18 Highland?  19       A. I don't have awareness.  20       Q. Okay. Did NexPoint – do you know  21 if NexPoint ever informed the retail board that  22 any – any portion of that \$23.7 million was  23 subject to any of the agreements that you  24 entered into with the Dugaboy trustee?  25       A. I – I don't know.</p>	Page 137

<p>1           JAMES DONDERO</p> <p>2   Q. Did you ever instruct anybody on</p> <p>3 behalf of NexPoint to advise the retail board</p> <p>4 of the existence of the agreements?</p> <p>5   A. No, I do not believe so.</p> <p>6   Q. Do you know if anybody acting on</p> <p>7 behalf of NexPoint has ever informed the retail</p> <p>8 board that NexPoint's outstanding obligation</p> <p>9 was subject to the agreements that you entered</p> <p>10 into with the Dugaboy trustee?</p> <p>11   A. No.</p> <p>12   Q. Did you ever inform the retail</p> <p>13 boards that any portion of this \$23 million was</p> <p>14 subject to offset?</p> <p>15   A. You know what, I – let me answer</p> <p>16 that and let me also adjust the last five no</p> <p>17 answers I just rattled off.</p> <p>18       I'm thinking in the context of the</p> <p>19 time period of the date of this letter, which</p> <p>20 is October of 2020.</p> <p>21       Again, there would have been similar</p> <p>22 letters and disclosures like this and</p> <p>23 additional questions, initial requests for</p> <p>24 renewal, and then subsequent questions,</p> <p>25 probably multiple subsequent questions, given</p>	Page 138	Page 139
<p>1           JAMES DONDERO</p> <p>2   A. Right. I just want to be clear that</p> <p>3 my answer's saying I did not specifically</p> <p>4 instruct somebody to tell them. It doesn't</p> <p>5 mean they don't know or someone else didn't</p> <p>6 tell them.</p> <p>7   Q. Okay.</p> <p>8   A. So that's – that's a clarification</p> <p>9 I want to make.</p> <p>10   Q. Okay. No problem.</p> <p>11       And then – and then do you see that</p> <p>12 there's a report to the retail board that HCMFA</p> <p>13 had approximately \$12.3 million outstanding to</p> <p>14 Highland as of June 30, 2020?</p> <p>15   A. Yes.</p> <p>16   Q. Okay. So just the same type of</p> <p>17 questions.</p> <p>18       Do you have any knowledge as to how</p> <p>19 that number was calculated?</p> <p>20   A. No.</p> <p>21   Q. Do you know if it includes the</p> <p>22 \$7.4 million, which is the aggregate principal</p> <p>23 amount of the two notes that HCMFA issued to</p> <p>24 Highland in May of 2019?</p> <p>25   A. I don't specifically, but given</p>	Page 140	Page 141

<p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Do you know whether anybody acting</p> <p>5 on behalf of either the advisors informed the</p> <p>6 retail board at any time in the year 2020 that</p> <p>7 either advisor had claims against Highland?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 THE WITNESS: I don't know.</p> <p>11 MR. MORRIS: Okay. We can take that</p> <p>12 down, please.</p> <p>13 MS. CANTY: (Complies with request.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Are you aware that the Court</p> <p>16 confirmed the Debtor's Fifth Amended Complaint</p> <p>17 of Reorganization in February of 2021?</p> <p>18 A. Generally.</p> <p>19 Q. And do you recall that objections to</p> <p>20 the confirmation of the plan were filed by you</p> <p>21 and each of the advisors, among others?</p> <p>22 A. Yes.</p> <p>23 Q. And do you recall that these</p> <p>24 actions, these lawsuits to collect on the</p> <p>25 notes, they were commenced before the</p>	Page 142	<p>1 JAMES DONDERO</p> <p>2 confirmation hearing, right?</p> <p>3 A. I – I don't – I don't know.</p> <p>4 Q. All right. I'll represent to you</p> <p>5 that the lawsuits were commenced on or about</p> <p>6 January 22, and the confirmation hearing took</p> <p>7 place, I think, on February 2 and February 3,</p> <p>8 2021.</p> <p>9 Does that refresh your recollection</p> <p>10 at all that the lawsuits were known to you at</p> <p>11 the time of confirmation?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: Not specifically. I</p> <p>15 mean, given the details you just explained,</p> <p>16 I guess generally.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Okay. I'd like to refer to you</p> <p>19 NexPoint and HCMFA and HCRE and Services</p> <p>20 collectively as the defendants for the next set</p> <p>21 of questions, okay?</p> <p>22 A. Okay.</p> <p>23 Q. And these questions are in your</p> <p>24 capacity as an individual and in your 30(b)(6)</p> <p>25 capacity, okay?</p>	Page 143
<p>1 JAMES DONDERO</p> <p>2 Is that okay, sir?</p> <p>3 A. I'll do the best I can. If I – if</p> <p>4 I need clarity or caveats, I'll throw them out</p> <p>5 there.</p> <p>6 Q. Okay. Now, I do understand you're</p> <p>7 not a 30(b)(6) witness for HCMFA today. So</p> <p>8 let's make that clear.</p> <p>9 MS. DEITSCH-PEREZ: Thank you.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. As to HCMFA, you're just here in</p> <p>12 your individual capacity as the control person,</p> <p>13 okay?</p> <p>14 Prior to confirmation, do you know</p> <p>15 whether anyone acting on behalf of any of the</p> <p>16 defendants ever disclosed to the bankruptcy</p> <p>17 court the terms or the existence of your</p> <p>18 agreement – agreements with the Dugaboy</p> <p>19 trustee?</p> <p>20 A. I guess generally, I've testified to</p> <p>21 this already. There were numerous</p> <p>22 conversations with Seery, and I know Lynn had</p> <p>23 conversations.</p> <p>24 Q. Sir, I apologize, but I'm going to</p> <p>25 interrupt because I know you're tired; and I</p>	Page 144	<p>1 JAMES DONDERO</p> <p>2 want to get this done. But my question had to</p> <p>3 do with the disclosure to the bankruptcy court,</p> <p>4 okay? Let me just try again.</p> <p>5 Are you aware, sir, whether any of</p> <p>6 the defendants disclosed to the bankruptcy</p> <p>7 court prior to confirmation the existence of</p> <p>8 the agreements that you entered into with the</p> <p>9 Dugaboy trustee?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form and to interrupting the witness.</p> <p>12 THE WITNESS: I'll say yes.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Did you do that?</p> <p>15 A. Yes.</p> <p>16 Q. And did you do that as part of your</p> <p>17 testimony in the hearing, or did you do it</p> <p>18 through the filing of a pleading?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I don't – I don't</p> <p>22 know about pleadings or filings. I – I</p> <p>23 don't know.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Do you recall what you told the</p>	Page 145

<p>1           JAMES DONDERO</p> <p>2 bankruptcy court about the agreements that you</p> <p>3 entered into with the Dugaboy trustee?</p> <p>4       A. No. I'm not – yes. No. I'm</p> <p>5 not – no, I don't. I don't want to – I don't</p> <p>6 want to start talking and have you strike it or</p> <p>7 object. So I'll just answer specifically until</p> <p>8 you get to the question.</p> <p>9       Q. Yeah. So – so again, I'm not</p> <p>10 trying to trick you.</p> <p>11       Can you recall when you told the</p> <p>12 bankruptcy court that you had entered into will</p> <p>13 the agreements with the Dugaboy trustee?</p> <p>14       A. No.</p> <p>15       Q. Can you remember the subject matter</p> <p>16 of any hearing at which you informed the</p> <p>17 bankruptcy court about the existence of the</p> <p>18 agreements that you entered into with the</p> <p>19 Dugaboy trustee?</p> <p>20       A. I don't know where or how this works</p> <p>21 legally. But every written proposal we put</p> <p>22 forward as a solution and as a plot plan,</p> <p>23 always had a zero on all the affiliated notes</p> <p>24 as being a zero in something that was</p> <p>25 ultimately likely to be compensation.</p>	Page 146	Page 147
<p>1           JAMES DONDERO</p> <p>2 reach outs – reaches out to creditors directly</p> <p>3 again and – to Clemente and the committee; but</p> <p>4 I think the committee already sold all their</p> <p>5 stuff by that point.</p> <p>6       I mean, I – listen, I – but I</p> <p>7 consider those reach-outs and characterizations</p> <p>8 of the notes as not part of settlement under</p> <p>9 the estate and that is likely to be</p> <p>10 compensation notifying the Court generally.</p> <p>11       Q. Okay. Are you aware of any notice</p> <p>12 that was ever given to Judge Jernigan about the</p> <p>13 existence of any of the agreements that you</p> <p>14 entered into with the Dugaboy trustee?</p> <p>15       A. I - I don't know.</p> <p>16       Q. Okay. You're not aware of any as</p> <p>17 you sit here right now; is that fair?</p> <p>18       A. Yes. I'm not aware if any of my</p> <p>19 reach-outs to the people that I described ever</p> <p>20 made it to Jernigan. I don't know.</p> <p>21       Q. Okay.</p> <p>22       A. I know she asked for updates on the</p> <p>23 plot plan. I know she asked for whatever, but</p> <p>24 I don't know what specificity any of the people</p> <p>25 I described presented them to her. So I don't</p>	Page 148	Page 149

<p>1 JAMES DONDERO</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 beginning of Media Number 3 in the</p> <p>4 deposition of James Dondero. We are back</p> <p>5 on the record. The time is 4:45.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Just to finish up on the topic we</p> <p>8 were on when we took the break, Mr. Dondero.</p> <p>9 Prior to confirmation, do you know</p> <p>10 which of the defendants ever informed the</p> <p>11 bankruptcy court that any of the Promissory</p> <p>12 Notes that are the subject of the lawsuits were</p> <p>13 unenforceable for any reason?</p> <p>14 And when I use the phrase</p> <p>15 "bankruptcy court" here – you know what, let</p> <p>16 me ask a different question.</p> <p>17 Prior to confirmation, do you know</p> <p>18 if anybody acting on behalf of the defendants</p> <p>19 ever disclosed to Judge Jernigan that any of</p> <p>20 the Promissory Notes subject to the lawsuits</p> <p>21 were unenforceable for any reason?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 THE WITNESS: I don't know.</p> <p>25</p>	Page 150	<p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Prior to confirmation, did you</p> <p>4 direct anybody to inform Judge Jernigan that</p> <p>5 any of the Promissory Notes were unenforceable</p> <p>6 for any reason?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. I want to direct your</p> <p>9 attention to December 2020.</p> <p>10 Do you recall if you had a</p> <p>11 conversation with Frank Waterhouse concerning</p> <p>12 payments that were due to Highland by any of</p> <p>13 the companies that you directly or indirectly</p> <p>14 own or control?</p> <p>15 A. I'm trying to think. Generally, we</p> <p>16 overpaid on shared services, so – by a</p> <p>17 significant amount, I believe 14, 15 million</p> <p>18 bucks. And then there was a supposed to be an</p> <p>19 overall transition settlement true-up regarding</p> <p>20 the employees, the office space, you know,</p> <p>21 whatever.</p> <p>22 So the – yeah, that's – that's the</p> <p>23 – that's my general recollection.</p> <p>24 Q. But did you give Mr. Waterhouse any</p> <p>25 instructions as to whether to pay or not pay</p>	Page 151
<p>1 JAMES DONDERO</p> <p>2 any amounts that were due and owing to Highland</p> <p>3 under any agreement between Highland and any</p> <p>4 affiliate?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 Are you asking about the Notes or</p> <p>8 the Shared Services Agreements?</p> <p>9 MR. MORRIS: I'm asking about – I'm</p> <p>10 asking very broadly any payments.</p> <p>11 THE WITNESS: I do remember having</p> <p>12 conversations not to pay any more shared</p> <p>13 services.</p> <p>14 And I hope there weren't anymore</p> <p>15 payments on shared services. There –</p> <p>16 There was never a specific to not pay the</p> <p>17 notes.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. So your recollection is that you</p> <p>20 instructed Mr. Waterhouse not to make any</p> <p>21 further payments under the shared services, and</p> <p>22 that's the instruction you gave?</p> <p>23 A. Yes.</p> <p>24 Q. Did you ever tell anybody in</p> <p>25 December of 2020 about your conversation with</p>	Page 152	<p>1 JAMES DONDERO</p> <p>2 Mr. Waterhouse?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Do you recall telling anybody other</p> <p>5 than Mr. Waterhouse in December 2020 that no</p> <p>6 payment should be made to Highland under the</p> <p>7 Shared Services Agreement?</p> <p>8 A. I do believe there was a team – I</p> <p>9 can't remember – I know Dustin Norris is on</p> <p>10 that team. He was aware. He was aware. And</p> <p>11 as a matter of fact, I think – yeah. He – I</p> <p>12 know he was aware for sure.</p> <p>13 Q. Anybody else?</p> <p>14 A. There were other people on that</p> <p>15 team, but I can't remember who was on that team</p> <p>16 or who was in the room at any time.</p> <p>17 Q. Is there anything in writing that</p> <p>18 you recall that reflects the instruction that</p> <p>19 you gave to Mr. Waterhouse in December 2020</p> <p>20 that we're talking about?</p> <p>21 A. I believe the back-and-forth and the</p> <p>22 true-up with Seery on the multiple of things</p> <p>23 that I was just discussing, you know, right to</p> <p>24 transition of people, it included no more</p> <p>25 shared services being paid and a credit for</p>	Page 153

<p>1           JAMES DONDERO</p> <p>2 overpayment on shared services. And those –</p> <p>3 those spreadsheets went back and forth, and</p> <p>4 Seery has copies of them also.</p> <p>5       Q. Are you aware of any payments being</p> <p>6 made by the advisors to Highland after</p> <p>7 November 30, 2020?</p> <p>8       A. Hopefully not on shared services. I</p> <p>9 believe there were payments on principal and</p> <p>10 interest on notes.</p> <p>11      Q. Were any of those payments that you</p> <p>12 have in mind made before the end of calendar</p> <p>13 year 2020 – withdrawn.</p> <p>14      Were any of those payments that you</p> <p>15 have in mind made in December 2020?</p> <p>16      A. I don't know. I don't know which</p> <p>17 ones were paid and kept current. I don't know</p> <p>18 which ones were cured. I don't – I don't</p> <p>19 remember which ones were which.</p> <p>20      Q. Are you aware of any note that was</p> <p>21 tendered by one of Highland's affiliates on</p> <p>22 which payment was made in December 2020?</p> <p>23      A. I don't know. I don't know when –</p> <p>24 I don't know which ones were kept current. I</p> <p>25 don't know which ones were cured in December.</p>	Page 154	<p>1           JAMES DONDERO</p> <p>2 I don't know which ones were cured in January</p> <p>3 or February. I don't know.</p> <p>4       Q. Is it your testimony that you</p> <p>5 believe that one or more of Highland affiliates</p> <p>6 made a payment in December 2020 to cure – as a</p> <p>7 cure payment?</p> <p>8        MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10      BY MR. MORRIS:</p> <p>11       Q. I just – I'm sorry. I –</p> <p>12       A. I – I – okay.</p> <p>13       Q. Yeah. I just want to try to get</p> <p>14 this as cleanly as I can. Did you –</p> <p>15       A. I believe –</p> <p>16       Q. Go ahead, sir.</p> <p>17       A. No. I'll let you go. It's better</p> <p>18 if you ask me.</p> <p>19       Q. Okay. Did you direct anybody to</p> <p>20 make any payment in December 2020 to Highland</p> <p>21 on behalf of any affiliate that you owned or</p> <p>22 controlled?</p> <p>23       A. I believe all notes are outstanding</p> <p>24 and current and in good standing. I don't know</p> <p>25 when they were cured.</p>	Page 155
<p>1           JAMES DONDERO</p> <p>2       Q. Are you just talking about the term</p> <p>3 notes here or the demand notes as well?</p> <p>4       A. All of the above. All of the notes</p> <p>5 as far as I know.</p> <p>6       Q. Are you aware that in December 2020,</p> <p>7 Highland made a demand for payment under all of</p> <p>8 the demand notes?</p> <p>9       A. And I believe they're all current as</p> <p>10 far as interest and principal amortization. I</p> <p>11 believe they've all been cured.</p> <p>12      Q. Okay. Can you identify any payment</p> <p>13 that was made in December 2020 to Highland on</p> <p>14 behalf of yourself or any entity that you</p> <p>15 directly or indirectly own or control?</p> <p>16      A. I wouldn't have been involved in –</p> <p>17 I wouldn't have been involved in normal course</p> <p>18 payments. I know there were – I know for sure</p> <p>19 there were cure payments in January. I don't</p> <p>20 know if there were in December.</p> <p>21      Q. Okay. And that's – we'll get to</p> <p>22 January. I'm just trying to finish up</p> <p>23 December.</p> <p>24      Are you aware of any payments made</p> <p>25 in December 2020 –</p>	Page 156	<p>1           JAMES DONDERO</p> <p>2        MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4        BY MR. MORRIS:</p> <p>5        Q. – by you – by you or any entity</p> <p>6 directly or indirectly owned or control by you</p> <p>7 to Highland?</p> <p>8        A. I don't have awareness.</p> <p>9        Q. Do you recall that early in 2021,</p> <p>10 Highland gave notice of default on the three</p> <p>11 term notes?</p> <p>12       A. I'm aware in – that January – yes,</p> <p>13 I guess I am aware that Highland declared them</p> <p>14 in default in January, yes.</p> <p>15       Q. And you're aware that in addition to</p> <p>16 declaring them in default, they gave notice of</p> <p>17 acceleration?</p> <p>18       A. I'm not aware of acceleration. I'm</p> <p>19 aware of, I guess, default I had heard.</p> <p>20       Q. Did you ever see the</p> <p>21 notice-of-default letters that Highland sent to</p> <p>22 NexPoint HCRE and services?</p> <p>23       A. I don't believe I've seen all of</p> <p>24 them. I think I've seen one on demand notes.</p> <p>25 I don't think I've – I don't remember seeing</p>	Page 157

<p>1           JAMES DONDERO</p> <p>2 any on term loans.</p> <p>3   Q. All right. So as you sit here right</p> <p>4 now, you don't have a recollection of having</p> <p>5 seen the default notices that were sent by</p> <p>6 Highland in January 2021 with respect to the</p> <p>7 term notes, right?</p> <p>8        MS. DEITSCH-PEREZ: Why don't you</p> <p>9 show him one.</p> <p>10      THE WITNESS: I don't recall. Yeah.</p> <p>11      I mean, I don't – I don't recall seeing</p> <p>12 any of them.</p> <p>13 BY MR. MORRIS:</p> <p>14     Q. Okay. How did you learn that</p> <p>15 Highland had sent the default notices?</p> <p>16     A. I believe it was at a hearing I</p> <p>17 attended in person from which I called Frank,</p> <p>18 and I was surprised and annoyed that the</p> <p>19 relative de minimis amounts hadn't been paid;</p> <p>20 and I asked him what does it take to cure them</p> <p>21 or make them current.</p> <p>22       And then he told me the numbers, and</p> <p>23 they were small and de minimis; and I told him</p> <p>24 make sure they get paid and make sure the notes</p> <p>25 are cured.</p>	Page 158	Page 159
<p>1           JAMES DONDERO</p> <p>2 lawyer, with Mr. Seery, about this?</p> <p>3        MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5        THE WITNESS: No. I thought Frank</p> <p>6 was fully empowered.</p> <p>7 BY MR. MORRIS:</p> <p>8       Q. Okay. Did you ever confirm your</p> <p>9 understanding about the cure with</p> <p>10 Mr. Waterhouse in writing?</p> <p>11      A. In writing? No. I believe it was</p> <p>12 all in that phone conversation from the Court.</p> <p>13 I don't – I don't recall anything in writing,</p> <p>14 but I'll check.</p> <p>15      Q. Do you recall sending him an e-mail</p> <p>16 in which you confirmed with Mr. Waterhouse your</p> <p>17 understanding that the debtor had agreed that</p> <p>18 the payments that were being paid would</p> <p>19 constitute a cure?</p> <p>20      A. No, I didn't – no. At the time I</p> <p>21 didn't think it was necessary. It was – the</p> <p>22 cure amount was calculated by Frank. It was</p> <p>23 paid immediately. It was accepted. I never –</p> <p>24 I never thought to memorialize it beyond that.</p> <p>25      Q. Okay. Did you – did you ever ask</p>	Page 160	Page 161

<p>1           JAMES DONDERO</p> <p>2 thought was necessary.</p> <p>3   Q. Okay. Did – did you ever tell</p> <p>4 Judge Jernigan that you had made cure payments?</p> <p>5   A. I didn't know I'm allowed to have</p> <p>6 ex parte conversations with her, but there's a</p> <p>7 lot of things I'd like to tell her about this</p> <p>8 case; but no I did not.</p> <p>9   Q. All right. I'm not talking about</p> <p>10 ex parte conversations, sir. Let's take</p> <p>11 confirmation, for example.</p> <p>12   Did you or anybody acting on any of</p> <p>13 the defendants' behalf ever inform</p> <p>14 Judge Jernigan that Frank Waterhouse had told</p> <p>15 you that the payments in January 2021 would be</p> <p>16 deemed to be cure payments?</p> <p>17   A. Not that I'm aware of.</p> <p>18   Q. Thank you.</p> <p>19   MR. MORRIS: Give me one more</p> <p>20 moment. In fact, I'm going to ask for just</p> <p>21 three minutes. I'm going to check and see</p> <p>22 how much more I have here. It won't be</p> <p>23 long if I have anything. So let's go off</p> <p>24 the record.</p> <p>25   THE VIDEOGRAPHER: Would you like to</p>	Page 162	Page 163
<p>1           JAMES DONDERO</p> <p>2   MS. DEITSCH-PEREZ: Do you got it?</p> <p>3   THE WITNESS: Yes.</p> <p>4 BY MR. MORRIS:</p> <p>5   Q. Have you seen this document before,</p> <p>6 sir?</p> <p>7   A. No.</p> <p>8   Q. Let's go to page 15 and see if that</p> <p>9 refreshes your recollection.</p> <p>10   Is that your signature?</p> <p>11   A. Yes.</p> <p>12   MS. DEITSCH-PEREZ: Yeah. It's late</p> <p>13 in the day, John.</p> <p>14   THE WITNESS: Yes.</p> <p>15   MR. MORRIS: That's why I showed him</p> <p>16 the signature.</p> <p>17 BY MR. MORRIS:</p> <p>18   Q. Does that refresh your recollection</p> <p>19 that you've seen this before?</p> <p>20   A. No. It refreshes my recollection</p> <p>21 that I signed it.</p> <p>22   Q. Okay. And –</p> <p>23   A. Not that I recall – not that I</p> <p>24 looked at it in detail in any way.</p> <p>25   Q. Okay. Did you review it before you</p>	Page 164	Page 165

<p>1           JAMES DONDERO</p> <p>2 Admission Number 3.</p> <p>3           Do you see that Highland asked you</p> <p>4 to admit, quote, "that prior to the</p> <p>5 commencement of the adversary proceeding, you</p> <p>6 never disclosed the terms of the agreement to</p> <p>7 Frank Waterhouse," close quote?</p> <p>8           A. That's on page 8, Number 3, right?</p> <p>9           Q. Correct. And you denied that,</p> <p>10 correct?</p> <p>11          A. Yes.</p> <p>12          Q. Okay. Did you disclose the terms of</p> <p>13 the agreement as we've defined that term to</p> <p>14 Frank Waterhouse prior to the commencement of</p> <p>15 the adversary proceeding?</p> <p>16          A. You know, what I've answered was a</p> <p>17 long answer earlier that the notes were</p> <p>18 compensation. The notes were to be – would be</p> <p>19 forgiven as part of compensation, shouldn't be</p> <p>20 included in any settlement.</p> <p>21          Frank and his group were deeply</p> <p>22 involved in all the plot plan and settlement,</p> <p>23 things that went back and forth. He knew.</p> <p>24          Now, whether he knew the specifics</p> <p>25 of the agreement in terms of, whether I ever</p>	Page 166	Page 167
<p>1           JAMES DONDERO</p> <p>2          A. There wasn't another reason – there</p> <p>3 – no, I don't remember any other context.</p> <p>4          Q. Okay.</p> <p>5          A. But the settlements were regular and</p> <p>6 ongoing –</p> <p>7          Q. Okay.</p> <p>8          A. – in our mind, not in the</p> <p>9 Stonehill's mind.</p> <p>10         Q. Okay. Can you go – can we go to</p> <p>11 page 9, Request for Admission Number 8?</p> <p>12         A. Yes.</p> <p>13         Q. Number 8 we asked you to "admit that</p> <p>14 no document was created prior to the</p> <p>15 commencement of the adversary proceeding</p> <p>16 concerning the existence of the agreement."</p> <p>17         Have I read that right –</p> <p>18         A. I'm just reading what's on page 9,</p> <p>19 admit that prior to the agreement he never</p> <p>20 disclosed any other creditor.</p> <p>21         Q. No, no, no. I'm sorry. We're on</p> <p>22 Number 8.</p> <p>23         Can you read Number 8 out loud?</p> <p>24         A. Number 8, I'm sorry. Admit that no</p> <p>25 document was created prior to the commencement</p>	Page 168	Page 169

<p>1           JAMES DONDERO</p> <p>2   Q. But you just testified a few minutes</p> <p>3 ago, I thought, that you didn't specifically</p> <p>4 tell Mr. Waterhouse of the terms of the</p> <p>5 agreements to him, right? Did I miss –</p> <p>6   A. That's right. I mean, not the</p> <p>7 specific terms, correct.</p> <p>8   Q. Okay. So is there any creditor to</p> <p>9 whom you – is there any creditor of Highland's</p> <p>10 to whom you disclosed the existence of the</p> <p>11 agreements that you entered into with the</p> <p>12 Dugaboy trustee prior to the commencement of</p> <p>13 the adversary proceeding?</p> <p>14    MS. DEITSCH-PEREZ: Asked and</p> <p>15 answered.</p> <p>16    THE WITNESS: Yeah. I mean,</p> <p>17 generally, all the creditors via the</p> <p>18 settlement. And then we have lots of</p> <p>19 one-off conversations with Clubock</p> <p>20 representing UBS where the notes were</p> <p>21 described as going to be forgiven</p> <p>22 compensation, never part of the estate.</p> <p>23 BY MR. MORRIS:</p> <p>24   Q. All right. I don't – I don't want</p> <p>25 to wrestle with you.</p>	Page 170	Page 171
<p>1           JAMES DONDERO</p> <p>2   MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4   THE WITNESS: 24, I'm sorry.</p> <p>5   Page 2?</p> <p>6 BY MR. MORRIS:</p> <p>7   Q. Page 12.</p> <p>8   A. Page 12. Yes. Which one?</p> <p>9   Q. Number 2.</p> <p>10   A. All right.</p> <p>11   Q. You didn't identify any email</p> <p>12 correspondence in response to Interrogatory</p> <p>13 Number 2; is that correct?</p> <p>14   A. I don't have my e-mails. So we have</p> <p>15 painfully little from the Highland estate.</p> <p>16   Q. Okay.</p> <p>17   A. I think at the time we responded, we</p> <p>18 thought we might get access to things; but we</p> <p>19 haven't been able to come up with anything. We</p> <p>20 have – we have no access to anything.</p> <p>21   Q. Okay. So as you sit here today, you</p> <p>22 cannot identify any e-mail correspondence that</p> <p>23 discusses the existence of the agreement,</p> <p>24 correct?</p> <p>25   A. Not yet, no.</p>	Page 172	Page 173

<p>1            JAMES DONDERO  2 at –  3    A. Yes.  4    Q. – Request for Admission Number 3,  5 is your answer the same on behalf of NexPoint  6 Advisors as it was for yourself as to why you  7 denied Request for Admission Number 3?  8    A. Yes.  9    Q. Okay. If we can go to Request for  10 Admission Number 6, that is the same Request  11 for Admission that we talked about with respect  12 to yourself in your individual capacity a  13 moment ago.  14    Is your reason for denying Request  15 for Admission Number 6 the same reason that you  16 gave for yourself?  17    A. Yes.  18    Q. And looking at Request for  19 Admissions Number 7 and 8, is the reason that  20 you denied those Requests for Admissions  21 because you told Seery and the committee and  22 Clubock that you wouldn't pay anything for the  23 notes because they were supposed to be forgiven  24 as part of your compensation?  25    A. And the independent board, yes.</p>	Page 174	<p>1            JAMES DONDERO  2    Q. Okay. Is there any other reason  3 that you denied Request for Admissions Number 7  4 and 8?  5    A. Not that I can think of at this  6 point in time.  7            I don't think the LPA applies much  8 here, but I may be –  9            MR. MORRIS: All right. I have no  10 further questions.  11            THE WITNESS: Wonderful. Thank you.  12            Have a good evening.  13            MR. MORRIS: Thank you. Take care.  14            MS. DEITSCH-PEREZ: Thank you.  15            MR. MORRIS: Bye now.  16            THE VIDEOGRAPHER: All right. If  17 there are no further questions, this  18 concludes today's deposition. Volume II  19 [sic] consists of three media. We are off  20 the record at 5:21 p.m.  21            THE COURT REPORTER: Everybody is  22 leaving, and I wanted to get everybody's  23 order on the record.  24            MS. DEITSCH-PEREZ: I'd like the  25 rough. And then the regular can be</p>	Page 175
<p>1            JAMES DONDERO  2 whenever you get the regular done. No  3 special rush.  4            THE COURT REPORTER: Okay. Thank  5 you.  6            MS. DEITSCH-PEREZ: You're welcome.  7            THE COURT REPORTER: Ms. Carty, I  8 think there's a standing order for a daily  9 delivery – or an immediate delivery for  10 your firm?  11            MS. CANTY: Yes.  12            THE COURT REPORTER: Okay. I just  13 wanted to confirm that. I'll get that out  14 tonight, then.  15            MS. CANTY: Okay, thank you.  16            (The witness is excused.)  17            (Deposition of James Dondero  18 concluded at 5:21 p.m. CDT.)  19  20  21  22  23  24  25</p>	Page 176	<p>1            C E R T I F I C A T E  2  3  4            I, SUZANNE J. STOTZ, a Certified  5 Shorthand Reporter, Registered Professional  6 Reporter, Certified Realtime Reporter, and  7 Notary Public in and for the State of Texas, do  8 hereby certify that the foregoing is a true and  9 accurate transcript of the stenographic  10 above-captioned matter.  11  12  13  14            SUZANNE J. STOTZ, CSR, RPR, CRR  15            Texas Certification No. 11942  16  17  18            DATED: November 4, 2021  19  20  21            NOTE: THE CERTIFICATE APPENDED TO THIS  22 TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION  23 OF THE SAME BY ANY MEANS, UNLESS UNDER THE  24 DIRECT CONTROL AND/OR DIRECTION OF THE  25 CERTIFYING COURT REPORTER.</p>	Page 177

1 ERRATA SHEET

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2 I have read my testimony in the foregoing  
3 transcript and believe it to be true and  
4 correct to the best of my knowledge and belief  
5 with the following changes:

6 PAGE LINE CHANGE

7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
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17 \_\_\_\_\_  
18 \_\_\_\_\_

19 WITNESS SIGNATURE DATE

20

21 Sworn and subscribed to before me this  
22 \_\_\_\_\_ day of \_\_\_\_\_, 2021.  
23  
24 Notary Public of the  
25 State of \_\_\_\_\_.

<p><b>\$</b></p> <p><b>\$1.55-million</b> 64:22</p> <p><b>\$12.3</b> 140:13 141:6, 12</p> <p><b>\$2</b> 62:6</p> <p><b>\$2.4</b> 91:11,13,23 92:6,11,14 93:12 103:17 104:2 107:23 109:2,25 110:13,23</p> <p><b>\$2.4-million</b> 91:19</p> <p><b>\$23</b> 138:13</p> <p><b>\$23.7</b> 137:10,22</p> <p><b>\$250,000</b> 58:20</p> <p><b>\$5</b> 101:22 102:17 111:17,21,24 112:4, 10 117:9 119:23</p> <p><b>\$5-million</b> 116:16 120:10</p> <p><b>\$500,000</b> 62:5</p> <p><b>\$6</b> 99:6,16,22</p> <p><b>\$6,068,851</b> 98:18</p> <p><b>\$7.4</b> 90:17 125:4 129:5 140:22 141:7</p> <p><b>\$7.44</b> 102:7</p> <p><b>\$7.5</b> 119:10,14,16</p> <p><b>\$7.8</b> 103:5</p> <p><b>0</b></p> <p><b>000025</b> 130:19</p> <p><b>000031</b> 130:19</p> <p><b>1</b></p> <p><b>1</b> 9:3 94:3 141:19</p> <p><b>100</b> 96:24</p> <p><b>12</b> 171:22 172:7,8 173:24</p> <p><b>13</b> 26:14</p> <p><b>14</b> 26:14 151:17</p>	<p><b>15</b> 151:17 164:8</p> <p><b>15-C</b> 130:11 131:3 137:3</p> <p><b>17</b> 20:20</p> <p><b>18</b> 20:8 26:13 71:16 73:15</p> <p><b>19</b> 20:8</p> <p><b>1939</b> 104:7</p> <p><b>1:17</b> 9:11</p> <p><b>2</b></p> <p><b>2</b> 52:24 94:19 97:15 108:25 132:9 135:15, 18 136:13 143:7 171:23 172:5,9,13</p> <p><b>2,500,024</b> 60:10</p> <p><b>2.4</b> 104:14 110:20</p> <p><b>2.5</b> 61:5</p> <p><b>20</b> 57:16 58:2</p> <p><b>200,000</b> 64:22</p> <p><b>2016</b> 57:13,21 58:18 59:3</p> <p><b>2017</b> 20:8,21 60:2,9 62:6 63:17 73:14 137:17</p> <p><b>2018</b> 20:21 23:4 122:24 123:9,16 129:4</p> <p><b>2019</b> 23:5 25:3 90:16, 25 91:13,24 97:15 99:22 102:7 108:10, 25 110:3,25 111:20, 25 112:5,10,18 113:3 114:9 116:15 117:5 119:9,24 120:11 123:24 124:25 128:14 140:24</p> <p><b>2020</b> 25:3,9 109:21 130:9,18,23 133:19, 23 136:11 137:3,8,9 138:20 139:13,23 140:14 141:22 142:6 151:9 152:25 153:5, 19 154:7,13,15,22 155:6,20 156:6,13,25</p>	<p><b>2021</b> 9:10 136:7,20 139:3 142:17 143:8 157:9 158:6 159:10, 24 161:23 162:15</p> <p><b>21</b> 141:15</p> <p><b>22</b> 143:6</p> <p><b>23</b> 130:18,23 133:18, 23 136:11</p> <p><b>24</b> 163:9,13,23,24 171:24 172:4</p> <p><b>252</b> 124:3</p> <p><b>27</b> 173:2,9</p> <p><b>2:28</b> 66:12</p> <p><b>2:43</b> 66:15</p> <p><b>2:44</b> 67:5</p> <p><b>3</b></p> <p><b>3</b> 117:5 119:23 123:24 143:7 150:3 165:10 166:2,8 173:16 174:4,7</p> <p><b>30</b> 8:18 12:6,22 22:3, 4,5 137:9 140:14 154:7</p> <p><b>30(b)(6)</b> 14:23 15:7 17:4 18:18,21 68:24 76:24 143:24 144:7</p> <p><b>300,000</b> 64:23</p> <p><b>31</b> 10:16 82:10 122:24 123:9,15 129:4 137:17</p> <p><b>34</b> 22:5 123:4,6</p> <p><b>35</b> 22:6</p> <p><b>36</b> 22:6</p> <p><b>375</b> 102:10</p> <p><b>39</b> 104:8 124:23</p> <p><b>3:21</b> 94:6</p> <p><b>3:22</b> 94:21</p> <p><b>3:28</b> 66:7</p> <p><b>3:40</b> 66:8</p> <p><b>3:53</b> 115:9</p>	<p><b>3:54</b> 115:12</p> <p><b>3rd</b> 111:20</p> <p><b>4</b></p> <p><b>4</b> 9:10 165:11</p> <p><b>4.4M</b> 118:5</p> <p><b>40</b> 12:6,24</p> <p><b>47</b> 104:9</p> <p><b>4:38</b> 149:24</p> <p><b>4:45</b> 149:22 150:5</p> <p><b>5</b></p> <p><b>5</b> 103:5</p> <p><b>50</b> 59:17,19 82:8</p> <p><b>50,000</b> 57:20</p> <p><b>51</b> 82:7</p> <p><b>53</b> 93:18 94:23 95:3 97:12 136:2</p> <p><b>54</b> 107:10,12 136:2</p> <p><b>56</b> 116:20,22</p> <p><b>57</b> 118:24 119:3</p> <p><b>59</b> 130:15,17</p> <p><b>5:03</b> 163:4</p> <p><b>5:06</b> 163:7</p> <p><b>5:21</b> 175:20 176:18</p> <p><b>5:37</b> 149:17</p> <p><b>5:38</b> 149:20</p> <p><b>6</b></p> <p><b>6</b> 174:10,15</p> <p><b>65,772</b> 63:12</p> <p><b>68</b> 55:21 56:2,9</p> <p><b>7</b></p> <p><b>7</b> 173:11,15 174:19 175:3</p> <p><b>70</b> 58:3</p>	<p><b>75</b> 35:3</p> <p><b>8</b></p> <p><b>8</b> 165:7 166:8 168:11, 13,22,23,24 174:19 175:4</p> <p><b>82</b> 13:3,12,17 14:3 39:16 47:10,20 48:8 81:25 82:10,11,17 83:18 171:6</p> <p><b>9</b></p> <p><b>9</b> 25:9 168:11,18 169:19,21</p> <p><b>90-day</b> 47:22</p> <p><b>A</b></p> <p><b>ability</b> 27:16 43:6 45:10 47:5</p> <p><b>acceleration</b> 157:17,18</p> <p><b>accepted</b> 8:25 160:23</p> <p><b>access</b> 172:18,20</p> <p><b>accommodated</b> 66:23</p> <p><b>accord</b> 89:18</p> <p><b>account</b> 47:2 100:18 102:7</p> <p><b>accountants</b> 134:5</p> <p><b>accounted</b> 110:22</p> <p><b>accounting</b> 37:24 107:19,22 108:2,12 110:8 111:13 117:5, 9,17 125:23 128:4,5 134:2</p> <p><b>accurately</b> 27:24</p> <p><b>acting</b> 40:22 59:10 65:20 73:5 105:7 134:16 138:6 141:10 142:4 144:15 149:7 150:18 159:8,20 161:3,10 162:12</p>
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## **EXHIBIT 100**

1  
2 IN THE UNITED STATES BANKRUPTCY COURT  
3 FOR THE NORTHERN DISTRICT OF TEXAS  
4 DALLAS DIVISION

5 IN RE:  
6 HIGHLAND CAPITAL  
7 MANAGEMENT, L.P.,

CHAPTER 11

8 Debtor.  
9 \_\_\_\_\_ /  
10 HIGHLAND CAPITAL  
11 MANAGEMENT FUND ADVISORS,  
12 L.P.; NEXPOINT ADVISORS,  
13 L.P.; HIGHLAND INCOME  
14 FUND; NEXPOINT STRATEGIC  
15 OPPORTUNITIES FUND;  
16 NEXPOINT CAPITAL, INC.;  
17 AND CLO HOLDCO, LTD.,  
18 Defendants.  
19 \_\_\_\_\_ /

20 REMOTE VIDEOTAPED DEPOSITION

21 OF

22 NANCY DONDERO

23 Monday, October 18, 2021

24 Reported by:  
25 ANNETTE ARLEQUIN, CCR, RPR, CRR, CLR  
26 JOB NO. 201194

	Page 2	Page 3
1		1
2		2 APPEARANCES:
3		3
4		4 PACHULSKI STANG ZIEHL & JONES
5	October 18, 2021	5 Attorneys for Debtor
6	10:30 a.m. (Central)	6 150 California Street
7		7 San Francisco, California 94111
8	Remote videotaped deposition of	8 BY: JOHN MORRIS, ESQ.
9	NANCY DONDERO, pursuant to Notice Rule	9 - and -
10	30(b)(6) and individually, before	10 PACHULSKI STANG ZIEHL & JONES
11	Annette Arlequin, a Certified Court	11 780 Third Avenue
12	Reporter, a Registered Professional	12 New York, New York 10017
13	Reporter, a Certified Realtime	13 BY: HAYLEY WINOGRAD, ESQ.
14	Reporter, and a Realtime Systems	14 GREGORY DEMO, ESQ.
15	Administrator and a Notary Public of	15
16	the State of New York, New Jersey and	16
17	Florida.	17 STINSON
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22		22 MICHAEL AIGEN, ESQ.
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14	BY: DOUGLAS DRAPER, ESQ.	14 ALSO PRESENT:
15		15
16		16 AARON LAWRENCE, Clerk, Quinn Emanuel
17	GREENBERG TRAURIG	17 LA ASIA CANTY, Paralegal from Pachulski
18	Attorneys for Nancy Dondero	18 PAIGE MONTGOMERY, Litigation Trust Attorney
19	2200 Ross Avenue	19 PATRICK DAUGHERTY (as noted)
20	Dallas, Texas 75201	20 DEBORAH NEWMAN
21	BY: DANIEL ELMS, ESQ.	21 MANUEL GARCIA, Legal Videographer
22		22
23		23
24		24
25		25

<p>1 2 IT IS HEREBY STIPULATED AND 3 AGREED by and between the attorneys for 4 the respective parties herein, that 5 filing and sealing be and the same are 6 hereby waived; 7 IT IS FURTHER STIPULATED AND 8 AGREED that all objections, except as 9 to the form of the question, shall be 10 reserved to the time of the trial; 11 IT IS FURTHER STIPULATED AND 12 AGREED that the within deposition may 13 be sworn to and signed before any 14 officer authorized to administer an 15 oath, with the same force and effect as 16 if signed and sworn to before the 17 Court. 18 19 -000- 20 21 22 23 24 25</p>	<p>Page 6</p> <p>1 N. Dondero 2 THE VIDEOGRAPHER: Good morning. 3 My name is Manuel Garcia. I'm a 4 certified legal videographer in 5 association with TSG Reporting, Inc. 6 Due to the severity of COVID-19, 7 and following the practice of social 8 distancing, I will not be in the same 9 room with the witness, but will record 10 the deposition remotely. 11 The reporter, Annette Arlequin, 12 also will not be in the same room and 13 will swear the witness remotely. 14 Do all parties stipulate to the 15 validity of this video recording and 16 remote swearing, and that it will be 17 admissible in the courtroom as if it 18 had been taken following Rule 30 of the 19 Federal Rules of Civil Procedures and 20 the State's rules where this case is 21 pending? 22 MR. MORRIS: Yes. 23 I would ask if anybody objects, 24 to speak up. If you don't object, then 25 we're going to go on negative notice</p>
<p>1 N. Dondero 2 here. 3 (No response.) 4 MR. MORRIS: Thank you very much. 5 And just to be clear, as I 6 communicated with Debra last evening, 7 the court reporter is not currently in 8 the State of Texas. 9 And I understand that counsel for 10 all defendants in the notes litigation 11 have waived any objection to the fact 12 that the oath is being administered 13 outside of the state. 14 If anybody disagrees or objects 15 to that, please speak up now. 16 Thank you very much. 17 Okay. You can swear the witness. 18 * * * 19 N A N C Y D O N D E R O, called as a 20 witness, having been duly sworn by a 21 Notary Public, was examined and 22 testified as follows: 23 THE WITNESS: Yes. 24 EXAMINATION BY 25 MR. MORRIS:</p>	<p>Page 8</p> <p>1 N. Dondero 2 Q. Okay. Can you please state your 3 name for the record? 4 A. Nancy Dondero. 5 Q. And where are you located right 6 now, Ms. Dondero? 7 A. In the law office of Deborah 8 Deitsch-Perez. 9 Q. Are you in Dallas? 10 A. I am. 11 Q. Is there anybody in the room with 12 you right now? 13 A. Yes. 14 Q. Who is in the room with you? 15 A. Deborah Deitsch-Perez and Dan 16 Elms. 17 Q. Is there anybody else in the room 18 with you right now? 19 A. Electronically is Douglas Draper. 20 Q. Okay. Thank you very much. 21 Do you have a telephone with you 22 right now? 23 A. My cellphone? 24 Q. Yes. 25 A. Yes. It's in my purse.</p>

<p>1 N. Dondero</p> <p>2 Q. Is it turned off?</p> <p>3 A. It is – well, yes, um-hmm. It's</p> <p>4 on silent.</p> <p>5 Q. Okay. Thank you very much.</p> <p>6 My name is John Morris. I'm an</p> <p>7 attorney at Patchulski Stang Ziehl &amp; Jones.</p> <p>8 We represent the reorganized Highland</p> <p>9 Capital Management LP, and we're here for</p> <p>10 your deposition today.</p> <p>11 Do you understand that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. Do you understand that</p> <p>14 this deposition is being videotaped?</p> <p>15 A. Yes.</p> <p>16 Q. And do you understand that I may</p> <p>17 seek to use that videotape in a court of</p> <p>18 law?</p> <p>19 A. Yes.</p> <p>20 Q. Do you understand that you're not</p> <p>21 allowed to communicate with anybody</p> <p>22 concerning the substance of your testimony</p> <p>23 until the deposition is completed?</p> <p>24 A. Yes.</p> <p>25 Q. Is there anything that would</p>	<p>Page 10</p> <p>1 N. Dondero</p> <p>2 prevent you from answering my questions</p> <p>3 today?</p> <p>4 A. No.</p> <p>5 Q. Do you have any problems with</p> <p>6 your memory?</p> <p>7 A. No.</p> <p>8 Q. Are you on any drugs or</p> <p>9 medications that might impair your ability</p> <p>10 to answer questions today?</p> <p>11 A. No.</p> <p>12 Q. Have you ever been deposed</p> <p>13 before?</p> <p>14 A. Once, a number of years ago.</p> <p>15 Q. Do you recall the subject matter</p> <p>16 of the testimony or the circumstances in</p> <p>17 which you gave a deposition?</p> <p>18 A. Personal injury.</p> <p>19 Q. And were you a witness or were</p> <p>20 you the plaintiff in that matter?</p> <p>21 A. Plaintiff.</p> <p>22 Q. Okay. So let me just give you</p> <p>23 the general ground rules so that there's –</p> <p>24 so that this can be efficient.</p> <p>25 This is a very difficult process</p>
<p>1 N. Dondero</p> <p>2 in normal times. It's particularly</p> <p>3 difficult because we're doing this</p> <p>4 remotely.</p> <p>5 So it is very important that you</p> <p>6 allow me to finish my question before you</p> <p>7 begin your answer.</p> <p>8 Is that fair?</p> <p>9 A. Yes.</p> <p>10 Q. And it's very important that I</p> <p>11 allow you to finish your answers before I</p> <p>12 begin the next question.</p> <p>13 And if I fail to do that, will</p> <p>14 you let me know?</p> <p>15 A. I will.</p> <p>16 Q. Okay. If there is anything that</p> <p>17 I ask you that you don't understand, will</p> <p>18 you let me know that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. From time to time, we're</p> <p>21 going to put some documents on the screen.</p> <p>22 It's not a – you know, it's not intended</p> <p>23 to be a test.</p> <p>24 If you see a document on the</p> <p>25 screen and you think that you need to see a</p>	<p>Page 12</p> <p>1 N. Dondero</p> <p>2 different portion of the document to put</p> <p>3 what I'm asking you about in context, will</p> <p>4 you let me know that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. I sent down to your lawyer</p> <p>7 last week 29 hard copies of certain</p> <p>8 documents.</p> <p>9 Do you have those handy?</p> <p>10 A. The big binder?</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. Okay. All right. We may refer</p> <p>14 to those –</p> <p>15 MR. RUKAVINA: John, hold up for</p> <p>16 a second. This is the Davor Rukavina.</p> <p>17 I'm one of the attorneys defending two</p> <p>18 of the defendants. I just – we</p> <p>19 haven't taken appearances, John. I</p> <p>20 just want to make sure that the record</p> <p>21 is clear that Deborah will be</p> <p>22 objecting. Ms. Deitsch-Perez will be</p> <p>23 objecting for me so that I don't have</p> <p>24 you to object. In other words, when</p> <p>25 she objects, consider it an objection</p>

<p>1 N. Dondero  2 on behalf of my clients NexPoint and  3 HCM Financial Advisors.  4 Is that acceptable, John?  5 MR. MORRIS: Yes.  6 MR. RUKAVINA: Thank you. Then  7 there is no need for me to speak.  8 MR. MORRIS: Okay. We'll miss  9 you.  10 BY MR. MORRIS:  11 Q. If you need a break at any time,  12 will you let me know that?  13 A. Yes.  14 Q. Okay. It's very important that  15 all of your responses to my questions be  16 verbal so that the court reporter can take  17 it down, okay?  18 A. Okay.  19 Q. And you do understand that the  20 court reporter is going to record and  21 transcribe every word that you and I say  22 today, okay?  23 A. Yes.  24 Q. Okay. From time to time, a  25 lawyer might object to one of my questions.</p>	<p>Page 14</p> <p>1 N. Dondero  2 That gives me the opportunity to think  3 about whether or not the answer to the  4 question would be admissible if I didn't  5 correct it.  6 I may ask you to just answer the  7 question because I don't think the  8 objection is going to be sustained. Just  9 let the lawyers do their thing. And unless  10 your lawyer directs you not to answer a  11 question, I would ask that you answer every  12 question that I ask, okay?  13 A. Yes.  14 Q. Thank you.  15 That's where you need to give the  16 verbal answer.  17 Just to go through a couple of  18 definitions so that I don't have to say  19 full names on certain things throughout the  20 day.  21 If I use the word "Dugaboy," will  22 you understand that I'm referring to The  23 Dugaboy Investment Trust?  24 A. Yes.  25 Q. If I use the word "Highland,"</p>	<p>Page 15</p>
<p>1 N. Dondero  2 will you understand that I'm referring only  3 to the entity that was known as Highland  4 Capital Management LP, both before the  5 bankruptcy filing and after the bankruptcy  6 filing?  7 A. Okay.  8 Q. If I use the phrase "LP  9 agreement" – withdrawn.  10 Are you familiar with the fourth  11 amended and restated limited partnership  12 agreement of Highland Capital Management  13 LP?  14 A. Yes.  15 Q. Okay. And if I refer to that  16 document as the "LP agreement," will you  17 understand what I'm referring to?  18 A. Yes.  19 Q. Do you understand that you're  20 here today both in your individual capacity  21 and in your capacity as the trustee or the  22 30 – what's called the 30(b)(6)  23 representative for Dugaboy?  24 A. Yes.  25 Q. And have you done anything to</p>	<p>Page 16</p> <p>1 N. Dondero  2 prepare for today's deposition?  3 A. Yes.  4 Q. Can you tell me what you did to  5 prepare for today's deposition?  6 A. I met with my attorney. And I  7 reviewed your big binder.  8 Q. When did you meet with your  9 attorneys?  10 A. Yesterday.  11 Q. Is that the only time that you  12 conferred with your attorneys in  13 preparation for today's deposition?  14 A. In person, yes.  15 Q. Okay. And how long did you meet  16 in person yesterday?  17 A. Four hours, four and a half  18 hours.  19 Q. And where did you meet?  20 A. At Deborah's office.  21 Q. And was anybody present there  22 other than your attorneys?  23 A. No.  24 Q. Was anybody on speakerphone or  25 otherwise communicating during the meeting</p>	<p>Page 17</p>

<p>1 N. Dondero  2 that was not one of your attorneys?  3 A. No.  4 Q. I think you mentioned, or you may  5 have implied, that you communicated with  6 your attorneys in preparation for today's  7 deposition but it wasn't in person.  8 Do I have that right?  9 A. Correct.  10 Q. Okay. Did you speak with them on  11 the phone?  12 A. Zoom meeting.  13 Q. And how many Zoom meetings did  14 you have in preparation for today's  15 deposition?  16 A. Three.  17 Q. Okay. And can you tell me when  18 those three Zoom meetings occurred?  19 A. Wednesday, Thursday, and Friday.  20 Q. And can you tell me how long each  21 of those meetings took place, each of those  22 Zoom meetings took place?  23 A. Approximately an hour.  24 Q. Did anybody other than your  25 attorneys participate in any of those three</p>	Page 18	<p>1 N. Dondero  2 Zoom meetings?  3 A. No.  4 Q. Did you review any documents in  5 preparation for today's deposition other  6 than the documents that I provided?  7 A. No.  8 MS. DEITSCH-PEREZ: To be fair, I  9 think we did give her the Dugaboy  10 notice. I don't remember if it's in  11 your binder.  12 MR. MORRIS: Deborah, are you  13 referring to the 30(b)(6) notice?  14 MS. DEITSCH-PEREZ: Yes.  15 MR. MORRIS: I appreciate that.  16 It was not in the binder.  17 BY MR. MORRIS:  18 Q. Other than the 30(b)(6) notice  19 that was in the binder and the 29 documents  20 that I provided to you, did you review  21 anything else, Ms. Dondero, in preparation  22 for today's deposition?  23 A. Not that I'm aware of.  24 Q. Was your brother present or did  25 your brother participate in any of the four</p>	Page 19
<p>1 N. Dondero  2 preparation meetings that you described?  3 A. No.  4 Q. Since the beginning of the year,  5 since January 1st, 2021, have you  6 communicated with your brother at any time  7 about the promissory notes that are the  8 subject of this litigation?  9 A. Not that I recall.  10 Q. You don't recall ever speaking to  11 your brother in 2021 about the promissory  12 notes that are the subject of the  13 litigation.  14 Do I have that right?  15 A. That's correct. I do not recall.  16 Q. Do you recall if you had any  17 conversations with your brother at any time  18 in 2021 about any of the defenses that he  19 is asserting in the litigation?  20 A. What do you – can you be more  21 specific?  22 Q. Are you aware that your brother  23 is a defendant in the lawsuits in which –  24 withdrawn.  25 Are you aware that you are a</p>	Page 20	<p>1 N. Dondero  2 defendant in certain lawsuits?  3 A. Yes.  4 Q. Are you aware that your brother  5 is also a defendant in certain lawsuits?  6 A. Yes.  7 Q. Are you aware that your brother  8 has asserted certain defenses to the claims  9 that are being asserted against him in  10 those lawsuits?  11 A. Yes.  12 Q. Did you ever discuss with your  13 brother at any time in 2021 any aspect of  14 the defenses that he is asserting in the  15 lawsuits?  16 A. No.  17 Q. Did you discuss with your brother  18 at any time in 2021 who would represent you  19 in connection with the lawsuits?  20 A. No, I don't believe so.  21 Q. Did you communicate with your –  22 and when I use the word "communication," I  23 want to be clear, I mean any form of  24 communication; either a meeting in public,  25 on the telephone, by email or text.</p>	Page 21

<p>1 N. Dondero</p> <p>2 Do you understand that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Did you – and did you</p> <p>5 understand that when I asked the last few</p> <p>6 questions about your communications with</p> <p>7 your brother?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. In 2021, had you</p> <p>10 communicated with your brother at any time</p> <p>11 about who would represent Dugaboy?</p> <p>12 A. Not that I remember.</p> <p>13 Q. You're the trustee of Dugaboy.</p> <p>14 Do I have that right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And Mr. Draper represents</p> <p>17 Dugaboy in Highland's bankruptcy case; is</p> <p>18 that right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Your brother and people working</p> <p>21 for him identified and selected Mr. Draper</p> <p>22 to serve as Dugaboy's counsel, correct?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form.</p> <p>25 A. I'm sorry. Can you ask that</p>	<p>Page 22</p> <p>1 N. Dondero</p> <p>2 again?</p> <p>3 Q. Sure.</p> <p>4 Your brother – you didn't select</p> <p>5 Mr. Draper to represent Dugaboy; is that</p> <p>6 right?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. I believe he was referred.</p> <p>10 Q. And who was he referred to?</p> <p>11 A. Me.</p> <p>12 Q. Who referred Mr. Draper to you?</p> <p>13 A. I do not remember.</p> <p>14 Q. It's your testimony that</p> <p>15 Mr. Draper was referred to you, and you</p> <p>16 decided to retain Mr. Draper?</p> <p>17 A. I don't – I don't know.</p> <p>18 Q. Do you know who decided to retain</p> <p>19 Mr. Draper?</p> <p>20 A. I do not.</p> <p>21 Q. Do you know who identified</p> <p>22 Mr. Draper as a possible attorney for</p> <p>23 Dugaboy?</p> <p>24 A. I do not know.</p> <p>25 Q. Do you know when Mr. Draper was</p>
<p>1 N. Dondero</p> <p>2 retained?</p> <p>3 A. No.</p> <p>4 Q. Do you recall when you first</p> <p>5 spoke to Mr. Draper – withdrawn.</p> <p>6 Do you recall when you first</p> <p>7 communicated with Mr. Draper?</p> <p>8 A. A couple of months ago.</p> <p>9 Q. Would it have been before or</p> <p>10 after July 1st, 2021?</p> <p>11 A. I don't know.</p> <p>12 Q. It might have been before; it</p> <p>13 might have been after.</p> <p>14 Do I have that right?</p> <p>15 A. Correct.</p> <p>16 Q. Can you identify any matter that</p> <p>17 Mr. Draper has handled in the Highland</p> <p>18 bankruptcy other than his representation of</p> <p>19 Dugaboy in these notes litigations?</p> <p>20 A. I would have to look. I don't</p> <p>21 know offhand.</p> <p>22 MS. DEITSCH-PEREZ: Yeah, John, I</p> <p>23 don't – this isn't a topic on the</p> <p>24 Dugaboy 30(b)(6). If you need her to</p> <p>25 go back and check the engagement – I</p>	<p>Page 24</p> <p>1 N. Dondero</p> <p>2 mean, it's not something that I believe</p> <p>3 she's been prepared on. And so I don't</p> <p>4 think it's fair to have a memory test</p> <p>5 on the dates of these things.</p> <p>6 MR. MORRIS: Okay. I appreciate</p> <p>7 that, Deborah. I'm asking – so let's</p> <p>8 clarify and say this was not a 30(b)(6)</p> <p>9 topic. It's not something that she</p> <p>10 should have prepared for. But I – she</p> <p>11 is here in her individual capacity, and</p> <p>12 I'll stipulate that these particular</p> <p>13 questions are in her individual</p> <p>14 capacity.</p> <p>15 MS. DEITSCH-PEREZ: Well, but in</p> <p>16 her individual capacity, it's not the</p> <p>17 subject of the notes litigation. And</p> <p>18 then I would object that it's really</p> <p>19 beyond the scope.</p> <p>20 MR. MORRIS: Okay. There is no</p> <p>21 scope because she's here in her</p> <p>22 individual capacity. But the objection</p> <p>23 is noted. Thank you very much.</p> <p>24 MS. DEITSCH-PEREZ: Thank you.</p> <p>25 BY MR. MORRIS:</p>

<p>1 N. Dondero</p> <p>2 Q. Did you ever consider hiring an</p> <p>3 attorney for Dugaboy other than Mr. Draper?</p> <p>4 A. No.</p> <p>5 Q. Did you ever spend any time</p> <p>6 trying to identify an attorney who would</p> <p>7 represent Dugaboy?</p> <p>8 A. No.</p> <p>9 Q. The Stinson firm represents you</p> <p>10 personally in this litigation; is that</p> <p>11 right?</p> <p>12 A. That's incorrect.</p> <p>13 Q. Who – do you know the name of</p> <p>14 Ms. Deitsch-Perez's law firm?</p> <p>15 A. Her law firm is Stinson.</p> <p>16 Q. And does that law firm represent</p> <p>17 you in your individual capacity?</p> <p>18 A. Okay.</p> <p>19 Q. That's okay.</p> <p>20 A. She represents – okay. Dan is</p> <p>21 here representing me personally.</p> <p>22 Q. Okay. And Dan is with the</p> <p>23 Stinson firm, correct?</p> <p>24 A. That's incorrect.</p> <p>25 Q. What firm –</p>	Page 26	Page 27
<p>1 N. Dondero</p> <p>2 Q. When did you first communicate</p> <p>3 with Ms. Deitsch-Perez?</p> <p>4 A. Prior to this deposition being</p> <p>5 scheduled in June.</p> <p>6 Q. Was she your counsel at the time?</p> <p>7 A. Yes.</p> <p>8 Q. When did you retain her?</p> <p>9 A. To the best of my recollection,</p> <p>10 it had to be late April or May of this</p> <p>11 year.</p> <p>12 Q. So Ms. Deitsch-Perez was</p> <p>13 representing you and your brother at the</p> <p>14 same time? Do I have that right?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have any agreements of any</p> <p>17 kind with your brother concerning these</p> <p>18 lawsuits?</p> <p>19 Withdrawn. That wasn't a good</p> <p>20 question.</p> <p>21 Do you have any agreements or</p> <p>22 understandings with your brother concerning</p> <p>23 the defense of these lawsuits?</p> <p>24 A. I'm sorry. I don't understand</p> <p>25 the question.</p>	Page 28	Page 29

<p>1 N. Dondero</p> <p>2 Q. Do you know whether the trust</p> <p>3 agreement protects you in your individual</p> <p>4 capacity as opposed to your capacity as the</p> <p>5 trustee of the Dugaboy trust?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. I'm sorry. Can you reask that</p> <p>9 question, Mr. Morris?</p> <p>10 Q. Sure.</p> <p>11 Do you know whether the trust</p> <p>12 agreement indemnifies you in your</p> <p>13 individual capacity, or is it only in your</p> <p>14 capacity as the trustee of the Dugaboy</p> <p>15 trust?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. That's a legal question I don't</p> <p>19 feel comfortable answering.</p> <p>20 Q. All right. I appreciate that it</p> <p>21 may have legal implications, but I just</p> <p>22 want to know what is in your head as a</p> <p>23 factual matter.</p> <p>24 Is it your personal</p> <p>25 understanding, whether it's right or wrong,</p>	Page 30	Page 31
<p>1 N. Dondero</p> <p>2 A. No.</p> <p>3 Q. Okay. Greenberg Traurig only</p> <p>4 represents you in your individual capacity.</p> <p>5 Do I have that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you have any agreement</p> <p>8 with anybody as to who would pay the</p> <p>9 invoices rendered by Greenberg Traurig?</p> <p>10 A. Yes.</p> <p>11 Q. And what agreement is that?</p> <p>12 A. That Dugaboy will pay Greenberg</p> <p>13 Traurig's expenses, bills.</p> <p>14 Q. Okay. So pursuant to that</p> <p>15 agreement, you won't have to pay any legal</p> <p>16 expenses associated with the defense of</p> <p>17 these lawsuits in your individual capacity.</p> <p>18 Do I have that right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. Let's just get some</p> <p>21 background here.</p> <p>22 Are you currently employed,</p> <p>23 ma'am?</p> <p>24 A. I am.</p> <p>25 Q. By whom?</p>	Page 32	Page 33

<p>1 N. Dondero</p> <p>2 Crescent Research on a continuous basis</p> <p>3 since 1997 until today?</p> <p>4 A. Correct.</p> <p>5 Q. Have you had any other employment</p> <p>6 since 1997 other than the work that you do</p> <p>7 for Crescent Research?</p> <p>8 A. No.</p> <p>9 Q. Did you obtain a college degree?</p> <p>10 A. I did.</p> <p>11 Q. Where did you attend college?</p> <p>12 A. Penn State.</p> <p>13 Q. And you graduated from Penn</p> <p>14 State?</p> <p>15 A. Correct.</p> <p>16 Q. And when was that?</p> <p>17 A. 1987.</p> <p>18 Q. What was your degree in?</p> <p>19 A. Hotel restaurant management.</p> <p>20 Q. Was it a BA or BS?</p> <p>21 A. I believe it's a BS.</p> <p>22 Q. Okay. Do you have any</p> <p>23 postgraduate degrees?</p> <p>24 A. No.</p> <p>25 Q. Do you hold any licenses of any</p>	<p>Page 34</p> <p>1 N. Dondero</p> <p>2 kind other than your driver's license?</p> <p>3 A. I do.</p> <p>4 Q. Can you describe for me every</p> <p>5 license that you hold other than your</p> <p>6 driver's license?</p> <p>7 A. I'm a real estate agent. I am</p> <p>8 notary. I have several professional</p> <p>9 licenses. Asset recovery specialist.</p> <p>10 Those are off the top of my head that I</p> <p>11 remember.</p> <p>12 Q. What is an asset recovery</p> <p>13 specialist license?</p> <p>14 A. It's licensed through – I don't</p> <p>15 remember the organization. You have to –</p> <p>16 I'm not sure how to answer that,</p> <p>17 Mr. Morris.</p> <p>18 Q. Can you tell me what asset</p> <p>19 recovery is generally in the context of</p> <p>20 your license?</p> <p>21 A. Certainly.</p> <p>22 It's finding assets for companies</p> <p>23 that have gone bankrupt.</p> <p>24 Q. So do you typically get hired by</p> <p>25 an estate fiduciary, a bankruptcy estate</p>
<p>1 N. Dondero</p> <p>2 fiduciary?</p> <p>3 A. I haven't done asset recovery in</p> <p>4 a number of years.</p> <p>5 Q. Okay. As opposed to licenses, do</p> <p>6 you have any certifications of any kind?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Can you tell me generally what</p> <p>9 you did professionally between the time you</p> <p>10 graduated from Penn State in 1987 and the</p> <p>11 time you formed and began working for</p> <p>12 Crescent Research?</p> <p>13 A. Immediately out of college, I</p> <p>14 worked for a company called Royal Schutt.</p> <p>15 Is an investigative firm. I built up their</p> <p>16 background division. The company closed.</p> <p>17 I took the background division and opened</p> <p>18 up a company called Info-Back Services. I</p> <p>19 ran that for a number of years in New</p> <p>20 Jersey.</p> <p>21 When I moved to Florida, I</p> <p>22 transferred that company and it became</p> <p>23 Crescent Research Services.</p> <p>24 We predominately do preemployment</p> <p>25 background screening, tenant research, and</p>	<p>Page 36</p> <p>1 N. Dondero</p> <p>2 I do a lot of trial prep for various</p> <p>3 attorneys.</p> <p>4 Q. All right. I think you mentioned</p> <p>5 three things. The first was preemployment</p> <p>6 background.</p> <p>7 Do I have that right?</p> <p>8 A. Yes.</p> <p>9 Q. And can you just describe</p> <p>10 generally what preemployment background</p> <p>11 pertains to?</p> <p>12 A. When people are applying for a</p> <p>13 job, I do the screening on their</p> <p>14 application prior to them being hired.</p> <p>15 Q. Okay. And what was the second</p> <p>16 piece?</p> <p>17 A. I do tenant screening as well,</p> <p>18 which is the equivalent for people renting</p> <p>19 properties.</p> <p>20 And the third component would be</p> <p>21 trial prep.</p> <p>22 Q. And what about trial prep? What</p> <p>23 does that mean? Can you help me to</p> <p>24 understand what investigative services you</p> <p>25 provide in the area of trial prep?</p>

<p>1 N. Dondero</p> <p>2 A. Certainly.</p> <p>3 I work for private attorneys. I</p> <p>4 worked for the public defender's office.</p> <p>5 I've worked to capital murder cases on</p> <p>6 down. I look for discrepancies in</p> <p>7 statements. I find witnesses, take</p> <p>8 statements and so forth. I help the lawyer</p> <p>9 prepare for trial.</p> <p>10 Q. Okay. You're familiar with a</p> <p>11 company, the company that we identified</p> <p>12 earlier, called Highland Capital Management</p> <p>13 LP?</p> <p>14 Do I have that right?</p> <p>15 A. Yes.</p> <p>16 Q. Oh, by the way, did you ever hear</p> <p>17 of a person named James P. Seery, Jr.?</p> <p>18 A. In regards to this case, yes.</p> <p>19 Q. Did you ever investigate</p> <p>20 Mr. Seery?</p> <p>21 A. No.</p> <p>22 Q. Did you ever investigate any of</p> <p>23 the independent directors who were</p> <p>24 appointed at Strand Advisors?</p> <p>25 A. Can you tell me who they are?</p>	Page 38	<p>1 N. Dondero</p> <p>2 Q. Russell Nelms or John Dubel?</p> <p>3 A. No.</p> <p>4 Q. Have you undertaken any</p> <p>5 investigation of any current or former</p> <p>6 employee of Highland since October 19th,</p> <p>7 2019?</p> <p>8 A. No.</p> <p>9 Q. Are you aware that Highland is</p> <p>10 the company that your brother founded with</p> <p>11 Mark Okada in the 1990s?</p> <p>12 A. Yes.</p> <p>13 Q. And you're aware that Highland</p> <p>14 filed for bankruptcy, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know when that occurred?</p> <p>17 A. October of '19, I believe.</p> <p>18 Q. Okay. I'll tell you it is</p> <p>19 October 19th, 2019. And if it's okay with</p> <p>20 you, I'd like to refer to October 19th,</p> <p>21 2019, as the petition date.</p> <p>22 Is that okay?</p> <p>23 A. Certainly.</p> <p>24 Q. Okay. When did you find out that</p> <p>25 Highland filed for bankruptcy?</p>	Page 39
<p>1 N. Dondero</p> <p>2 A. It was either the day after --</p> <p>3 when it appeared in the Dallas Morning</p> <p>4 News.</p> <p>5 Q. So you didn't have any advanced</p> <p>6 notice that your brother was going to file</p> <p>7 Highland for bankruptcy; is that right?</p> <p>8 A. I did not.</p> <p>9 Q. Did you speak to your brother</p> <p>10 after learning that Highland filed for</p> <p>11 bankruptcy?</p> <p>12 A. I would imagine I called him,</p> <p>13 sure.</p> <p>14 Q. Do you have any recollection of</p> <p>15 what was said in the phone call that you</p> <p>16 imagine occurred?</p> <p>17 A. No.</p> <p>18 Q. Okay. Do you directly or</p> <p>19 indirectly own any economic interest in</p> <p>20 Highland today?</p> <p>21 A. No.</p> <p>22 Q. Do you understand that if I use</p> <p>23 the phrase "directly or indirectly," I'm</p> <p>24 asking whether you own it in your personal</p> <p>25 name or through a company that you might</p>	Page 40	<p>1 N. Dondero</p> <p>2 own, such as Crescent Research?</p> <p>3 A. Okay.</p> <p>4 Q. Do you understand the phrase</p> <p>5 "directly or indirectly"?</p> <p>6 A. No.</p> <p>7 Can you elaborate, please?</p> <p>8 Q. Sure.</p> <p>9 A direct interest would be an</p> <p>10 interest that you hold in your own name, in</p> <p>11 the name of Nancy Dondero.</p> <p>12 Do you understand that?</p> <p>13 A. Okay.</p> <p>14 Q. And an indirect interest is an</p> <p>15 interest that you own through some other</p> <p>16 vehicle, through some other entity in which</p> <p>17 you also have an ownership interest.</p> <p>18 Do you understand that?</p> <p>19 A. Okay.</p> <p>20 Q. Okay. So --</p> <p>21 A. Yes. But are you referring to --</p> <p>22 Q. Go ahead.</p> <p>23 A. I'm just not clear.</p> <p>24 Do you mean like Highland funds</p> <p>25 or stock?</p>	Page 41

<p>1 N. Dondero</p> <p>2 Q. I'm only talking about Highland</p> <p>3 Capital Management LP.</p> <p>4 A. No, I have no interest.</p> <p>5 Q. Have you ever directly or</p> <p>6 indirectly owned any limited partnership</p> <p>7 interests in Highland?</p> <p>8 A. No.</p> <p>9 Q. Have you ever directly or</p> <p>10 indirectly owned any interest of any kind</p> <p>11 in Highland?</p> <p>12 A. No.</p> <p>13 Q. Do you directly or indirectly</p> <p>14 have any claims against Highland that you</p> <p>15 know of?</p> <p>16 MS. DEITSCH-PEREZ: And, again,</p> <p>17 you are still talking about Nancy</p> <p>18 Dondero?</p> <p>19 MR. MORRIS: Yes, I am. Thank</p> <p>20 you.</p> <p>21 A. No, sir.</p> <p>22 Q. Did you have an understanding of</p> <p>23 the nature of Highland's business as of the</p> <p>24 petition date?</p> <p>25 A. Generally.</p>	Page 42	Page 43
<p>1 N. Dondero</p> <p>2 that Highland was a hedge fund, do you have</p> <p>3 any understanding or did you have any</p> <p>4 understanding as of the petition date</p> <p>5 regarding the nature of Highland's</p> <p>6 business?</p> <p>7 A. Since the petition date?</p> <p>8 Q. As of the petition date.</p> <p>9 A. No.</p> <p>10 Q. Do you have any – I apologize.</p> <p>11 A. I know obviously it's a financial</p> <p>12 company, and it has funds and so forth.</p> <p>13 Q. Have you learned anything about</p> <p>14 the nature of Highland's business since the</p> <p>15 petition date? Anything additional?</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you have an</p> <p>18 understanding of the industry that Highland</p> <p>19 operates in or that Highland operated in</p> <p>20 prior to the petition date?</p> <p>21 A. Sure. Yes.</p> <p>22 Q. What industry did you understand</p> <p>23 Highland to be operating in prior to the</p> <p>24 petition date?</p> <p>25 A. The financial industry.</p>	Page 44	Page 45

<p>1 N. Dondero</p> <p>2 Q. Do you recall the circumstances</p> <p>3 under which you learned that Strand was</p> <p>4 Highland's general partner?</p> <p>5 A. No, sir.</p> <p>6 Q. Have you done anything to try to</p> <p>7 verify whether Strand was in fact</p> <p>8 Highland's general partner?</p> <p>9 A. No.</p> <p>10 Q. Have you ever been employed by</p> <p>11 Strand?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. You can answer. That's one of</p> <p>16 those situations your lawyer can object to</p> <p>17 preserve the question. I think the</p> <p>18 question is fine, so you can answer the</p> <p>19 question.</p> <p>20 MS. DEITSCH-PEREZ: Do you mean</p> <p>21 technically like hired and worked as a</p> <p>22 W-2 employee?</p> <p>23 MR. MORRIS: Yes.</p> <p>24 A. Okay. And that's a no, a W-2</p> <p>25 employee.</p>	Page 46	<p>1 N. Dondero</p> <p>2 Q. Okay. Have you ever served as an</p> <p>3 officer or director of Strand?</p> <p>4 A. No, sir.</p> <p>5 Q. Have you ever been employed by</p> <p>6 any entity in which you believed your</p> <p>7 brother had a direct or indirect ownership</p> <p>8 interest?</p> <p>9 A. No, sir.</p> <p>10 Q. Have you ever served as an</p> <p>11 officer or director for any entity in which</p> <p>12 you believed your brother had a direct or</p> <p>13 indirect ownership interest?</p> <p>14 A. No, sir.</p> <p>15 Q. Has Crescent Research ever</p> <p>16 provided services to Highland?</p> <p>17 A. Yes.</p> <p>18 Q. When did Crescent Research first</p> <p>19 provide services to Highland?</p> <p>20 A. It's been a number of years. The</p> <p>21 actual beginning, I don't know.</p> <p>22 Q. And did you, in your capacity as</p> <p>23 the owner of Crescent Research, run</p> <p>24 individualized background checks on</p> <p>25 prospective employees of Highland?</p>	Page 47
<p>1 N. Dondero</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did Crescent Research</p> <p>4 provide any services for Highland other</p> <p>5 than that?</p> <p>6 A. No, not that I'm aware of.</p> <p>7 Q. Okay. Have you ever been</p> <p>8 employed in the financial services</p> <p>9 industry?</p> <p>10 A. No, sir.</p> <p>11 Q. Other than as it may relate to</p> <p>12 this case, do you have any experience</p> <p>13 making decisions in the area of executive</p> <p>14 compensation?</p> <p>15 A. No.</p> <p>16 Q. Do you hold yourself out as an</p> <p>17 expert in the area of executive</p> <p>18 compensation?</p> <p>19 A. No.</p> <p>20 Q. Have you ever taken any classes</p> <p>21 or courses concerning executive</p> <p>22 compensation?</p> <p>23 A. No.</p> <p>24 Q. Have you ever been compensated</p> <p>25 for services rendered by you in the area of</p>	Page 48	<p>1 N. Dondero</p> <p>2 executive compensation?</p> <p>3 A. No.</p> <p>4 Q. Have you ever conferred with</p> <p>5 anybody who you believed to be an expert in</p> <p>6 the area of executive compensation?</p> <p>7 A. No, sir.</p> <p>8 Q. Have you ever prepared any</p> <p>9 analysis of any kind concerning executive</p> <p>10 compensation?</p> <p>11 A. No, sir.</p> <p>12 Q. Have you ever asked anyone to</p> <p>13 prepare any analysis of any kind in the</p> <p>14 area of executive compensation?</p> <p>15 A. No.</p> <p>16 Q. Has anyone ever prepared an</p> <p>17 analysis for you in the area of executive</p> <p>18 compensation?</p> <p>19 A. I'm sorry, sir. Can you repeat</p> <p>20 that question?</p> <p>21 Q. Sure.</p> <p>22 Did anybody ever prepare any</p> <p>23 analysis for you that covered the topic –</p> <p>24 any topic concerning executive</p> <p>25 compensation?</p>	Page 49

<p>1 N. Dondero</p> <p>2 A. No.</p> <p>3 Q. Do you have any knowledge as to</p> <p>4 how executives are compensated in the</p> <p>5 financial industry?</p> <p>6 A. Just a general awareness.</p> <p>7 Q. And what is the basis, what is</p> <p>8 the foundation of your general awareness?</p> <p>9 A. Obviously the better a company</p> <p>10 does, probably the more the CEO is paid.</p> <p>11 Q. Do you have any understanding of</p> <p>12 how executives are compensated in the</p> <p>13 financial industry other than that?</p> <p>14 A. No, sir.</p> <p>15 Q. All right. So now I'm going to</p> <p>16 ask you the same questions in your capacity</p> <p>17 as the trustee of Dugaboy.</p> <p>18 Did Dugaboy ever prepare any</p> <p>19 written analysis concerning executive</p> <p>20 compensation?</p> <p>21 A. No, sir.</p> <p>22 Q. Has Dugaboy ever asked anybody to</p> <p>23 prepare any analysis on any issue</p> <p>24 concerning executive compensation?</p> <p>25 A. No.</p>	Page 50	Page 51
<p>1 N. Dondero</p> <p>2 Q. Did you personally ever play any</p> <p>3 role in the setting of Mr. Dondero's</p> <p>4 salary?</p> <p>5 A. In the salary that we are talking</p> <p>6 about, no, I did not.</p> <p>7 Q. Thank you.</p> <p>8 Did Dugaboy play any role in the</p> <p>9 setting of Mr. Dondero's salary?</p> <p>10 MS. DEITSCH-PEREZ: Do you mean</p> <p>11 setting or approving, John?</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Let's go with setting first.</p> <p>14 A. Okay. No.</p> <p>15 Q. Did Dugaboy play any role in</p> <p>16 approving Mr. Dondero's salary?</p> <p>17 A. It has that right, but I don't</p> <p>18 believe it did in the salary that he had at</p> <p>19 the time.</p> <p>20 Q. Okay. I just want to nail this</p> <p>21 down.</p> <p>22 To the best of your recollection,</p> <p>23 Dugaboy never played a role in approving</p> <p>24 Mr. Dondero's salary.</p> <p>25 Do I have that right?</p>	Page 52	Page 53

<p>1 N. Dondero</p> <p>2 Q. I'm just talking about Highland.</p> <p>3 A. Okay. Didn't we talk about those</p> <p>4 numbers?</p> <p>5 Q. We talked about salary before.</p> <p>6 A. Right.</p> <p>7 Q. And now I'm asking you about</p> <p>8 total compensation.</p> <p>9 Do you understand that.</p> <p>10 A. No, I don't.</p> <p>11 Q. Let me try again. Thank you for</p> <p>12 letting me know that. And I encourage you</p> <p>13 to let me know if you don't understand a</p> <p>14 question.</p> <p>15 Do you know what Mr. Dondero's</p> <p>16 total compensation was from Highland in</p> <p>17 2017?</p> <p>18 A. No, I do not.</p> <p>19 Q. Did you ever ask anybody what</p> <p>20 Mr. Dondero's total compensation from</p> <p>21 Highland was in 2017?</p> <p>22 A. No. Other than the figures that</p> <p>23 we are talking about. Because I'm still</p> <p>24 not understanding, John. I'm sorry.</p> <p>25 Q. Well, do you understand that</p>	<p>Page 54</p> <p>1 N. Dondero</p> <p>2 salary is just one component of</p> <p>3 Mr. Dondero's compensation?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay.</p> <p>6 A. Um-hmm. That, I understand.</p> <p>7 Q. Okay. And so do you understand</p> <p>8 that I'm moving from salary to total</p> <p>9 compensation, and I'm asking for the value</p> <p>10 of any benefits he received from Highland</p> <p>11 when I use the word "compensation"?</p> <p>12 A. Okay. And –</p> <p>13 Q. So with that understanding, I'm</p> <p>14 going to start again.</p> <p>15 Do you know what Mr. Dondero's</p> <p>16 total compensation was in 2017?</p> <p>17 A. I do not know.</p> <p>18 Q. Did you ever ask anybody what</p> <p>19 Mr. Dondero's total compensation was in</p> <p>20 2017?</p> <p>21 A. No.</p> <p>22 Q. Did Dugaboy know what</p> <p>23 Mr. Dondero's compensation was in 2017?</p> <p>24 A. I do not believe so.</p> <p>25 Q. To the best of your knowledge,</p>
<p>1 N. Dondero</p> <p>2 did anybody on behalf of Dugaboy ever try</p> <p>3 to ascertain what Mr. Dondero's total</p> <p>4 compensation was in 2017?</p> <p>5 A. To the best of my knowledge, no.</p> <p>6 Q. Do you know what Mr. Dondero's</p> <p>7 total compensation from Highland was in</p> <p>8 2018?</p> <p>9 A. No.</p> <p>10 Q. Did you ever ask anybody what</p> <p>11 Mr. Dondero's total compensation was in</p> <p>12 2018?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Did Dugaboy know what</p> <p>15 Mr. Dondero's total compensation was for</p> <p>16 2018?</p> <p>17 A. I don't think so.</p> <p>18 Q. To the best of your knowledge,</p> <p>19 did anybody ever ask on behalf of Dugaboy</p> <p>20 what Mr. Dondero's total compensation from</p> <p>21 Highland was in 2018?</p> <p>22 A. I don't recall. I don't know.</p> <p>23 Q. Do you know what Mr. Dondero's</p> <p>24 total compensation was in 2019?</p> <p>25 A. No.</p>	<p>Page 56</p> <p>1 N. Dondero</p> <p>2 Q. Did you ever ask anybody what</p> <p>3 Mr. Dondero's total compensation was in</p> <p>4 2019?</p> <p>5 A. Not that I remember.</p> <p>6 Q. Did Dugaboy know what</p> <p>7 Mr. Dondero's total compensation from</p> <p>8 Highland was in 2019?</p> <p>9 A. I don't believe so.</p> <p>10 Q. Do you know whether Dugaboy ever</p> <p>11 asked anybody what Mr. Dondero's total</p> <p>12 compensation was from Highland in 2019?</p> <p>13 A. I don't think so.</p> <p>14 THE WITNESS: Would it be okay if</p> <p>15 we take a break?</p> <p>16 MR. MORRIS: Just a couple more</p> <p>17 questions, Deborah.</p> <p>18 You know what, I apologize. Of</p> <p>19 course, of course we can take a break.</p> <p>20 MR. DRAPER: John, this is</p> <p>21 Douglas. Let me raise an issue with</p> <p>22 you.</p> <p>23 MR. MORRIS: Do you want to do</p> <p>24 this on the record?</p> <p>25 MR. DRAPER: Well, we can do it</p>

<p>1 N. Dondero</p> <p>2 off the record. But I just noticed on</p> <p>3 the participants you have Page</p> <p>4 Montgomery and Deborah Newman, who are</p> <p>5 not parties to this litigation, and I</p> <p>6 would request that you ask them to get</p> <p>7 off the line.</p> <p>8 MR. MORRIS: Okay. I'll take it</p> <p>9 under advisement, Douglas, but I will</p> <p>10 point out that there have always been</p> <p>11 people who have – they actually have</p> <p>12 an interest in this litigation, so I'm</p> <p>13 not even going to address that. They</p> <p>14 have an interest in the litigation,</p> <p>15 okay?</p> <p>16 MR. DRAPER: John –</p> <p>17 MR. MORRIS: Let's go off the</p> <p>18 record, please.</p> <p>19 THE VIDEOGRAPHER: The time is</p> <p>20 10:30. We are going off the record.</p> <p>21 (Recess is taken.)</p> <p>22 THE VIDEOGRAPHER: The time is</p> <p>23 10:51. Back on the record.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Ms. Dondero, can you hear me?</p>	Page 58	Page 59
<p>1 N. Dondero</p> <p>2 A. I don't remember.</p> <p>3 Q. Do you remember how you learned</p> <p>4 it?</p> <p>5 A. No.</p> <p>6 Q. Did you ever know that your</p> <p>7 brother received a salary of a million</p> <p>8 dollars from Highland?</p> <p>9 A. A million dollars even?</p> <p>10 Q. Yes.</p> <p>11 A. No.</p> <p>12 Q. Did you ever learn that your</p> <p>13 brother had his salary increased to</p> <p>14 two-and-a-half million dollars from</p> <p>15 Highland?</p> <p>16 A. When?</p> <p>17 Q. I'm just asking if you ever</p> <p>18 learned it.</p> <p>19 A. Oh, no.</p> <p>20 Q. Did you ever learn that somebody</p> <p>21 made a decision to allocate the</p> <p>22 two-and-a-half million dollars between and</p> <p>23 among different entities that your brother</p> <p>24 owned and controlled?</p> <p>25 A. I have no idea.</p>	Page 60	Page 61

<p>1 N. Dondero</p> <p>2 the term "financial statements"?</p> <p>3 A. Yes.</p> <p>4 Q. And what's your understanding of</p> <p>5 the term "financial statements"?</p> <p>6 A. Balance sheets, bank statements.</p> <p>7 Q. Would it include profit and loss</p> <p>8 statements?</p> <p>9 A. Certainly.</p> <p>10 Q. Would it include statements of</p> <p>11 operations?</p> <p>12 A. I would imagine, yes.</p> <p>13 Q. Using a definition of the term</p> <p>14 financial statements that incorporates each</p> <p>15 of the items that we just discussed, did</p> <p>16 you ever review Highland's financial</p> <p>17 statements prior to the petition date?</p> <p>18 A. No, I haven't reviewed Highland's</p> <p>19 financials.</p> <p>20 Q. Is it fair to say that you never</p> <p>21 reviewed Highland's balance sheet prior to</p> <p>22 the petition date?</p> <p>23 A. That's fair. Correct.</p> <p>24 Q. Did you ever see Highland's</p> <p>25 audited financial statements prior to the</p>	Page 62	<p>1 N. Dondero</p> <p>2 petition date?</p> <p>3 A. Not that I remember, no.</p> <p>4 Q. Did you ever ask anybody to see</p> <p>5 Highland's financial statements?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Did you ever have access to</p> <p>8 Highland's financial statements?</p> <p>9 A. No.</p> <p>10 Q. Did you know anything about</p> <p>11 Highland's financial condition prior to the</p> <p>12 petition date?</p> <p>13 A. No, I was not aware.</p> <p>14 Q. Have you ever heard of the term</p> <p>15 "portfolio company" in relation to</p> <p>16 Highland?</p> <p>17 A. I have.</p> <p>18 Q. Do you have an understanding of</p> <p>19 the term "portfolio company" as it relates</p> <p>20 to Highland?</p> <p>21 A. Yes, generally.</p> <p>22 Q. What is your general</p> <p>23 understanding of the term "portfolio</p> <p>24 company" as it relates to Highland?</p> <p>25 A. As I understand it, they're</p>	Page 63
<p>1 N. Dondero</p> <p>2 companies owned by Highland under their</p> <p>3 umbrella.</p> <p>4 Q. And how did you form that</p> <p>5 understanding?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you recall when you first came</p> <p>8 to the understanding that you have</p> <p>9 concerning the term "portfolio company" as</p> <p>10 it relates to Highland?</p> <p>11 A. No.</p> <p>12 Q. Based on your understanding of</p> <p>13 the term "portfolio company," do you know</p> <p>14 how many portfolio companies Highland had</p> <p>15 prior to the petition date?</p> <p>16 A. Several.</p> <p>17 Q. Can you give me an approximate</p> <p>18 number, to the best of your understanding?</p> <p>19 A. More than – I would imagine more</p> <p>20 than three.</p> <p>21 Q. And why do you imagine it's more</p> <p>22 than three?</p> <p>23 A. Because I'm aware of three.</p> <p>24 Q. Are you aware of any others,</p> <p>25 other than the three that you have in your</p>	Page 64	<p>1 N. Dondero</p> <p>2 head?</p> <p>3 A. Not off the top of my head, no.</p> <p>4 Q. Can you identify any of the three</p> <p>5 portfolio companies that you have in your</p> <p>6 head?</p> <p>7 A. Certainly.</p> <p>8 Q. Okay. Can you please identify</p> <p>9 them?</p> <p>10 A. Trussway, Comerstone, MGM.</p> <p>11 Q. And you believe that Highland had</p> <p>12 a – withdrawn.</p> <p>13 And your understanding was that</p> <p>14 Highland directly or indirectly owned each</p> <p>15 of those three companies?</p> <p>16 A. That was my understanding.</p> <p>17 Q. And what was the basis for that</p> <p>18 understanding?</p> <p>19 A. The basis of that understanding</p> <p>20 has to do with the forgiveness of the note.</p> <p>21 Q. So how did you learn that</p> <p>22 Highland had a direct or indirect economic</p> <p>23 interest in each of the three portfolio</p> <p>24 companies that you identified?</p> <p>25 A. I believe it was from Jim.</p>	Page 65

<p>1 N. Dondero</p> <p>2 Q. Do you recall any source of</p> <p>3 information other than Jim?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Prior to the petition date, were</p> <p>6 you aware of the price that Highland paid</p> <p>7 to acquire its interest in each of the</p> <p>8 three portfolio companies that you</p> <p>9 identified?</p> <p>10 A. Not that I am aware of.</p> <p>11 Q. Did you ever ask for any</p> <p>12 information concerning the price that</p> <p>13 Highland paid to acquire its interest in</p> <p>14 each of the three portfolio companies that</p> <p>15 you identified?</p> <p>16 A. No.</p> <p>17 Q. Prior to the petition date, did</p> <p>18 you have access to any information</p> <p>19 concerning the value of any of the three</p> <p>20 portfolio companies that you identified?</p> <p>21 A. Not that I am aware of.</p> <p>22 Q. Prior to the petition date –</p> <p>23 well, let's talk about them individually.</p> <p>24 You referred to MGM.</p> <p>25 Do I have that right?</p>	Page 66	Page 67
<p>1 N. Dondero</p> <p>2 petition date, did Dugaboy have an</p> <p>3 understanding of the nature of Highland's</p> <p>4 interest in MGM?</p> <p>5 A. Not that I'm aware of. Well,</p> <p>6 wait, I'm sorry. Can you – wait. Ask</p> <p>7 that again, John. Say that again.</p> <p>8 Q. Sure.</p> <p>9 At any time prior to the petition</p> <p>10 date –</p> <p>11 A. Right.</p> <p>12 Q. – did Dugaboy have an</p> <p>13 understanding as to the nature of</p> <p>14 Highland's interest in MGM?</p> <p>15 A. I knew that they had an interest</p> <p>16 in MGM prior to the petition date.</p> <p>17 Q. Okay. Did you or Dugaboy know</p> <p>18 the nature of that interest, in what form</p> <p>19 it held?</p> <p>20 A. Not specifically, John.</p> <p>21 Q. Did you or Dugaboy make any</p> <p>22 effort prior to the petition date to learn</p> <p>23 about the nature and extent of Highland's</p> <p>24 interest in MGM?</p> <p>25 A. Not that I recall.</p>	Page 68	Page 69

<p>1 N. Dondero</p> <p>2 A. I'm sorry, John, the question?</p> <p>3 Q. Sure.</p> <p>4 I'm going to ask a different</p> <p>5 question. It was a fine objection.</p> <p>6 Do you recall the value of</p> <p>7 Highland's interest in MGM at any time</p> <p>8 prior to the petition date?</p> <p>9 A. I do not recall.</p> <p>10 Q. Did you or Dugaboy ever know the</p> <p>11 value of Highland's interest in MGM at any</p> <p>12 time prior to the petition date?</p> <p>13 A. No.</p> <p>14 Q. Did you or Dugaboy ever ask for</p> <p>15 any information concerning the value of</p> <p>16 Highland's interest in MGM at any time</p> <p>17 prior to the petition date?</p> <p>18 A. Not that I remember.</p> <p>19 Q. Prior to the petition date, did</p> <p>20 you or Dugaboy ever make any determination</p> <p>21 as to whether the value of Highland's</p> <p>22 interest in MGM exceeded its cost?</p> <p>23 A. I'm sorry. Can you repeat that,</p> <p>24 John?</p> <p>25 Q. Sure.</p>	Page 70	Page 71
<p>1 N. Dondero</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. All right. I'm going to ask</p> <p>5 similar questions with respect to</p> <p>6 Cornerstone.</p> <p>7 Cornerstone is one of the</p> <p>8 portfolio companies that you identified</p> <p>9 earlier, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And did you learn from Jim that</p> <p>12 Cornerstone was one of Highland's portfolio</p> <p>13 companies prior to the petition date?</p> <p>14 A. I believe that is correct.</p> <p>15 Q. Do you have any other source of</p> <p>16 information for that other than your</p> <p>17 brother?</p> <p>18 A. Not that I remember.</p> <p>19 Q. At any time prior to the petition</p> <p>20 date, did you or Dugaboy have an</p> <p>21 understanding as to the nature of</p> <p>22 Highland's interest in Cornerstone?</p> <p>23 A. No.</p> <p>24 Q. At any time prior to the petition</p> <p>25 date, did you or Dugaboy ask anybody what</p>	Page 72	Page 73

<p>1 N. Dondero  2 business?  3 A. I do not.  4 Q. Did you ever ask anybody what the  5 nature of Cornerstone's business was?  6 A. No.  7 Q. Did you ever make any effort –  8 withdrawn.  9 Did you or Dugaboy ever make any  10 effort to try to determine the nature of  11 Cornerstone's business?  12 A. Not that I recall.  13 Q. Did you or Dugaboy know the value  14 of Highland's interest in Cornerstone prior  15 to the petition date?  16 A. We did not.  17 Q. Did you or Dugaboy ever ask  18 anybody prior to the petition date what the  19 value of Highland's interest in Cornerstone  20 was?  21 A. Not that I remember.  22 Q. Do you remember whether you or  23 Dugaboy made any effort prior to the  24 petition date to try to ascertain the value  25 of Highland's interest in Cornerstone?</p>	Page 74	<p>1 N. Dondero  2 A. I don't believe so.  3 Q. Have you heard of a company  4 called Trussway?  5 A. Yes.  6 Q. Do you know the nature of  7 Trussway's business?  8 A. I do not.  9 Q. Did you ever ask anybody what the  10 nature of Trussway's business was?  11 A. No, sir.  12 Q. Did you or Dugaboy make any  13 effort at any time prior to the petition  14 date to try to understand the nature of  15 Trussway's business?  16 A. I don't believe so.  17 Q. Did you or Dugaboy make any  18 effort prior to the petition date to  19 understand the financial condition of MGM?  20 A. Of MGM? I'm sorry. I thought we  21 were talking about Trussway. We're going  22 back to MGM?  23 Q. We were. I'm sorry. It's a new  24 question. I'm just going to tick the box.  25 A. Oh, okay. I'm sorry. I was a</p>	Page 75
<p>1 N. Dondero  2 little slow on the switch.  3 Q. That's okay.  4 A. Can you repeat the question?  5 Q. Sure.  6 Did you or Dugaboy make any  7 effort prior to the petition date to assess  8 MGM's financial condition?  9 A. Not that I recall.  10 Q. Did you or Dugaboy make any  11 effort prior to the petition date to try to  12 understand the financial condition of  13 Cornerstone?  14 A. Not that I recall.  15 Q. Did you or Dugaboy prior to the  16 petition date make any effort to try to  17 understand the financial condition of  18 Trussway?  19 A. No, not that I recall.  20 Q. Is it your understanding that  21 Trussway was one of the portfolio  22 companies, as you defined it earlier?  23 A. Yes.  24 Q. And is that understanding based  25 solely on information that you received</p>	Page 76	<p>1 N. Dondero  2 from your brother?  3 A. Yes. Yes.  4 Q. Okay. At any time prior to the  5 petition date, did you or Dugaboy have an  6 understanding as to the nature of  7 Highland's interest in Trussway?  8 A. I don't know.  9 Q. Do you recall whether you or  10 Dugaboy ever had an understanding prior to  11 the petition date concerning the nature of  12 Highland's interest in Trussway?  13 A. I don't know.  14 Q. Do you recall that either you or  15 Dugaboy ever asked anybody what the nature  16 of Highland's interest in Trussway was  17 prior to the petition date?  18 A. I don't believe so.  19 Q. Prior to the petition date, did  20 you or Dugaboy make any effort to try to  21 determine the nature of Highland's interest  22 in Trussway?  23 A. I don't believe so.  24 Q. Prior to the petition date, did  25 you or Dugaboy know Highland's cost to</p>	Page 77

<p>1 N. Dondero</p> <p>2 acquire its interest in Trussway?</p> <p>3 A. We did not.</p> <p>4 Q. Prior to the petition date, did</p> <p>5 you or Dugaboy ever ask anybody what</p> <p>6 Highland's cost was to acquire its interest</p> <p>7 in Trussway?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Prior to the petition date, did</p> <p>10 you or Dugaboy make any effort to try to</p> <p>11 ascertain what Highland's cost was to</p> <p>12 acquire its interest in Trussway?</p> <p>13 A. Not that I remember.</p> <p>14 Q. Did you or Dugaboy know the value</p> <p>15 of Highland's interest in Trussway prior to</p> <p>16 the petition date?</p> <p>17 A. Not that I am aware of.</p> <p>18 Q. Prior to the petition date, did</p> <p>19 you or Dugaboy ever ask anybody what the</p> <p>20 value of Highland's interest was in</p> <p>21 Trussway?</p> <p>22 A. I don't think so.</p> <p>23 Q. Do you know whether you or</p> <p>24 Dugaboy prior to the petition date made any</p> <p>25 effort to try to ascertain the value of</p>	Page 78	<p>1 N. Dondero</p> <p>2 Highland's interest in Trussway?</p> <p>3 A. I don't believe so.</p> <p>4 Q. Did you or Dugaboy know prior to</p> <p>5 the petition date whether the value of</p> <p>6 Highland's interest in Trussway was more or</p> <p>7 less than its cost?</p> <p>8 A. I do not know.</p> <p>9 Q. Did you ever ask anybody –</p> <p>10 withdrawn.</p> <p>11 Did you or Dugaboy ever ask</p> <p>12 anybody prior to the petition date whether</p> <p>13 the value of Highland's interest in</p> <p>14 Trussway was more or less than its cost?</p> <p>15 A. I don't think so.</p> <p>16 Q. Did you or Dugaboy make any</p> <p>17 attempt prior to the petition date to</p> <p>18 determine whether the value of Highland's</p> <p>19 interest in Trussway was more or less than</p> <p>20 its cost?</p> <p>21 A. I don't think so.</p> <p>22 Q. Okay. I apologize if I asked</p> <p>23 these questions already. I think I may</p> <p>24 have forgotten them, but I'm just going to</p> <p>25 ask just those last couple of questions –</p>	Page 79
<p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: All of them.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. – related to Cornerstone.</p> <p>5 A. Okay.</p> <p>6 Q. Did you or Dugaboy know prior to</p> <p>7 the petition date whether the value of</p> <p>8 Highland's interest in Cornerstone was more</p> <p>9 or less than its cost?</p> <p>10 A. I don't know if we knew.</p> <p>11 Q. Did you or Dugaboy ask anybody</p> <p>12 prior to the petition date whether the</p> <p>13 value of Highland's interest in Cornerstone</p> <p>14 was more or less than its cost?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know whether you or</p> <p>17 Dugaboy made any effort prior to the</p> <p>18 petition date to determine whether</p> <p>19 Highland's – whether the value of</p> <p>20 Highland's interest in Comerstone was more</p> <p>21 or less than its cost?</p> <p>22 A. I don't remember.</p> <p>23 Q. Okay. I'm going to shift gears</p> <p>24 now to talk about loans.</p> <p>25 A. Okay.</p>	Page 80	<p>1 N. Dondero</p> <p>2 Q. All right. You're aware that</p> <p>3 from time to time, Highland provided loans</p> <p>4 to certain of its officers and employees,</p> <p>5 right?</p> <p>6 A. I am.</p> <p>7 Q. And you're aware that in exchange</p> <p>8 for the loans from Highland, the officers</p> <p>9 and employees gave Highland promissory</p> <p>10 notes?</p> <p>11 A. Correct.</p> <p>12 Q. Are you aware of any loan that</p> <p>13 Highland ever gave to an officer or</p> <p>14 employee where the officer or employee</p> <p>15 failed to give a promissory note in return?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. John, I'm sorry. Can you repeat</p> <p>19 the question, please?</p> <p>20 Q. Yeah.</p> <p>21 I just want to know if you are</p> <p>22 aware of any instance where Highland gave a</p> <p>23 loan to an officer or an employee where the</p> <p>24 officer or employee failed to give Highland</p> <p>25 a promissory note in exchange?</p>	Page 81

<p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. You can answer.</p> <p>6 A. I am not aware of any.</p> <p>7 Q. Okay. Do you have a general</p> <p>8 understanding of what a promissory note is?</p> <p>9 A. A promise to pay.</p> <p>10 Q. Okay. Is it a promise to pay a</p> <p>11 sum certain?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 MR. MORRIS: Withdrawn.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Do you understand that a</p> <p>17 promissory note is a promise to pay a</p> <p>18 specified amount at some point in the</p> <p>19 future?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. You can answer.</p> <p>24 A. That was my understanding, John.</p> <p>25 Q. Okay. Prior to the petition</p>	<p>Page 82</p> <p>1 N. Dondero</p> <p>2 date, did you ever see any promissory note</p> <p>3 that was signed by an officer or employee</p> <p>4 of Highland?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Do you have any recollection --</p> <p>7 do you have any recollection, as you sit</p> <p>8 here right now, of having seen a promissory</p> <p>9 note that was signed by an officer or</p> <p>10 employee of Highland prior to the petition</p> <p>11 date?</p> <p>12 Withdrawn. That is not a good</p> <p>13 question?</p> <p>14 Prior to the petition date, did</p> <p>15 you see any promissory note that was signed</p> <p>16 by any officer or employee of Highland?</p> <p>17 A. I don't remember.</p> <p>18 Q. You don't have any recollection</p> <p>19 of that; is that fair?</p> <p>20 A. That's fair.</p> <p>21 Q. Do you know whether Dugaboy ever</p> <p>22 saw any promissory note prior to the</p> <p>23 petition date that had been signed by an</p> <p>24 officer or employee of Highland?</p> <p>25 A. I don't know.</p>
<p>1 N. Dondero</p> <p>2 Q. Prior to the petition date, did</p> <p>3 you or Dugaboy ever ask to see any</p> <p>4 promissory note that was executed by an</p> <p>5 officer or employee of Highland?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. I don't remember, John.</p> <p>9 Q. Okay. Do you know if Highland</p> <p>10 ever forgave any obligations under any</p> <p>11 promissory note that was issued by any</p> <p>12 Highland employee or officer?</p> <p>13 MS. DEITSCH-PEREZ: Objection.</p> <p>14 No foundation.</p> <p>15 A. I am not aware.</p> <p>16 Q. You're not aware of Highland ever</p> <p>17 forgiving any loan that it made to any</p> <p>18 officer or employee.</p> <p>19 Do I have that right?</p> <p>20 MS. DEITSCH-PEREZ: Object. No</p> <p>21 foundation.</p> <p>22 A. I'm not sure, John. I'm not</p> <p>23 sure.</p> <p>24 Q. Does Dugaboy have any knowledge</p> <p>25 concerning any loan that was given by</p>	<p>Page 84</p> <p>1 N. Dondero</p> <p>2 Highland to any of its officers or</p> <p>3 employees that was forgiven in whole or in</p> <p>4 part?</p> <p>5 A. I don't know.</p> <p>6 Q. Did you or Dugaboy ever ask</p> <p>7 anybody prior to the petition date whether</p> <p>8 Highland had ever forgiven any loan that it</p> <p>9 made to any officer or employee?</p> <p>10 A. I don't think so.</p> <p>11 Q. Did you or Dugaboy make any</p> <p>12 effort at any time prior to the petition</p> <p>13 date to determine whether Highland had ever</p> <p>14 forgiven in whole or in part any loan that</p> <p>15 it made to any of its officers or</p> <p>16 employees?</p> <p>17 A. Did I make any inquiries? Is</p> <p>18 that what you're asking?</p> <p>19 Q. Did you make any effort to try to</p> <p>20 answer -- to try to figure that out?</p> <p>21 A. To determine one way or the</p> <p>22 other?</p> <p>23 Q. Correct.</p> <p>24 A. Not that I recall, no.</p> <p>25 Q. Did anybody ever tell you --</p>

<p>1 N. Dondero  2 withdrawn.  3 Did anybody ever give you or  4 Dugaboy any information concerning any loan  5 that Highland ever made to any of its  6 employees or officers that was forgiven in  7 whole or in part?  8 A. I was aware that that was a  9 common practice at Highland.  10 Q. Okay. And how did you become  11 aware of that common practice?  12 A. In conversations with Jim.  13 Q. Was there any other source of  14 information concerning that common practice  15 that he described for you – withdrawn.  16 Did you have any other source of  17 information concerning the common practice  18 that you just mentioned?  19 A. Did I have any –  20 Q. Any other source – yeah.  21 Did you have any other source of  22 information other than your brother  23 concerning the common practice that you  24 just described?  25 A. I'm not sure if I spoke to other</p>	<p>Page 86</p> <p>1 N. Dondero  2 people in addition to Jim. I don't know.  3 Q. Can you identify anybody that you  4 recall speaking to concerning the practice  5 that your brother told you that Highland  6 had of forgiving loans to employees and  7 officers?  8 A. I don't remember who it was at  9 Highland that I have spoken to about that  10 or overheard a conversation.  11 Q. Do you recall when the  12 conversation took place?  13 A. No, I don't.  14 Q. Do you recall where the  15 conversation took place?  16 A. No, no, I don't. I believe it  17 was a phone conversation.  18 Q. Can you identify any person who  19 participated in the phone conversation?  20 A. Jim was one of the parties.  21 Q. Do you recall anybody else?  22 A. I do not.  23 Q. Do you recall if the conversation  24 took place before or after the petition  25 date?</p>
<p>1 N. Dondero  2 A. I don't know.  3 Q. So it might have happened before;  4 it might have happened after.  5 Is that fair?  6 A. Correct.  7 Q. Do you remember the substance of  8 the conversation at all?  9 A. Not in detail.  10 Q. Can you describe for me  11 everything you recall about the  12 conversation you have in your mind  13 concerning the practice that Highland had  14 of forgiving loans to officers and  15 employees?  16 A. I am aware that it was common  17 practice, or at least I believed it was  18 common practice at Highland.  19 Q. Do you have any other information  20 that you can share with me that you learned  21 concerning the practice other than the fact  22 that it existed?  23 A. Not at this time.  24 Q. Can you identify a single officer  25 or employee who had a loan forgiven?</p>	<p>Page 88</p> <p>1 N. Dondero  2 A. Not off the top of my head, no.  3 Q. Did you or Dugaboy ever know the  4 identity of any officer or employee of  5 Highland who had a loan forgiven?  6 MS. DEITSCH-PEREZ: Object to the  7 form.  8 A. Again, John, not off the top of  9 my head.  10 Q. Did you ever see anything in  11 writing that concerned or related to the  12 practice that your brother described for  13 you?  14 A. Not that I remember, no.  15 Q. Did you ever ask to see any  16 documents that concerned or related to the  17 practice that your brother described for  18 you?  19 A. Again, I don't recall, John.  20 Q. Did Dugaboy ever ask for  21 information concerning Highland's practice  22 of forgiving loans?  23 A. No, I don't believe so.  24 Q. Did you or Highland ever know  25 about the number of loans that Highland</p>

<p>1 N. Dondero</p> <p>2 made to employees or officers that Highland</p> <p>3 forgave?</p> <p>4 A. I'm sorry, did me or Highland</p> <p>5 know?</p> <p>6 Q. I apologize. If that's what I</p> <p>7 said, I'm mistaken. Thank you.</p> <p>8 Did you or Dugaboy – did you or</p> <p>9 Dugaboy ever know how many loans were</p> <p>10 forgiven?</p> <p>11 A. A specific number, no.</p> <p>12 Q. Did you or Dugaboy know – ever</p> <p>13 know the amount, the face amount of the</p> <p>14 loans that were forgiven?</p> <p>15 A. No, not that I recall.</p> <p>16 Q. Did you or Dugaboy ever know the</p> <p>17 year in which Highland ever forgave any</p> <p>18 loan to any officer or employee?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Okay. Do you know Mark Okada?</p> <p>21 A. I do.</p> <p>22 Q. Have you ever met him?</p> <p>23 A. I have.</p> <p>24 Q. Okay. Do you know whether</p> <p>25 Highland ever gave a loan to Mr. Okada that</p>	Page 90	Page 91
<p>1 N. Dondero</p> <p>2 Mr. Okada?</p> <p>3 A. No, sir.</p> <p>4 Q. You're aware that Highland loaned</p> <p>5 money to your brother, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Do you know how many loans</p> <p>8 Highland made to your brother?</p> <p>9 A. Over what period of time, John?</p> <p>10 Q. From the time the company was</p> <p>11 formed.</p> <p>12 A. Okay. There's more – I'm not</p> <p>13 sure how to answer that, John.</p> <p>14 Q. Okay. That's fair.</p> <p>15 A. Can you be more specific with the</p> <p>16 time frame, please?</p> <p>17 Q. You bet.</p> <p>18 Let's take it for the ten years</p> <p>19 prior to the petition date. So let's go</p> <p>20 back to 2009.</p> <p>21 From 2009 to 2019 –</p> <p>22 A. Okay.</p> <p>23 Q. – do you know how many loans</p> <p>24 Highland made to your brother?</p> <p>25 A. To just Jim or to Jim and his</p>	Page 92	Page 93

<p>1 N. Dondero</p> <p>2 A. Or a portion?</p> <p>3 What are you speaking of?</p> <p>4 Q. Let's start with the entirety,</p> <p>5 and I'll ask the question again.</p> <p>6 Are you and Dugaboy aware of any</p> <p>7 loan that your brother obtained from</p> <p>8 Highland that he paid back in full, plus</p> <p>9 interest?</p> <p>10 A. I am not sure.</p> <p>11 Q. Did you or Dugaboy ever ask</p> <p>12 anybody whether your brother had ever</p> <p>13 obtained a loan from Highland that he paid</p> <p>14 back in full, plus interest?</p> <p>15 A. I don't think so.</p> <p>16 Q. Did you or Dugaboy ever make any</p> <p>17 effort prior to the petition date to</p> <p>18 determine whether or not Highland had –</p> <p>19 withdrawn.</p> <p>20 Did you and Dugaboy make any</p> <p>21 effort prior to the petition date to</p> <p>22 determine whether your brother had ever</p> <p>23 paid back all principal and interest due on</p> <p>24 any loan that he had obtained from</p> <p>25 Highland?</p>	Page 94	Page 95
<p>1 N. Dondero</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you have an</p> <p>4 understanding of the term "affiliates" as</p> <p>5 it relates to Highland?</p> <p>6 A. Yes.</p> <p>7 Q. What's your understanding of the</p> <p>8 term "affiliates" as it relates to</p> <p>9 Highland?</p> <p>10 A. Companies that are associated</p> <p>11 with Highland.</p> <p>12 Q. And what does it mean to be</p> <p>13 associated with Highland?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 MR. MORRIS: Withdrawn.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. What do you mean when you say</p> <p>19 that affiliated companies are those that</p> <p>20 are associated with Highland?</p> <p>21 A. They're under the Highland</p> <p>22 umbrella.</p> <p>23 Q. Is it your understanding that</p> <p>24 affiliated companies are controlled by your</p> <p>25 brother?</p>	Page 96	Page 97

<p>1 N. Dondero</p> <p>2 A. I'm not sure. Of Highland loans?</p> <p>3 Okay. I'm not sure, John.</p> <p>4 Q. Prior to the petition date, did</p> <p>5 you or Dugaboy know whether Highland ever</p> <p>6 made a loan to an affiliate, as you've</p> <p>7 defined it?</p> <p>8 A. Yes, there were loans made.</p> <p>9 Q. Okay. And how did you learn that</p> <p>10 there were loans made by Highland to its</p> <p>11 affiliates?</p> <p>12 A. Jim and I had discussed the loans</p> <p>13 that were made.</p> <p>14 Are we talking about certain</p> <p>15 ones, John?</p> <p>16 Q. I'm just talking generally at the</p> <p>17 moment.</p> <p>18 How did you learn whatever</p> <p>19 information you have, and we'll get into</p> <p>20 the details, but how did you learn that</p> <p>21 Highland made loans to affiliates?</p> <p>22 A. From Jim.</p> <p>23 Q. Okay. Did you have any source of</p> <p>24 information other than your brother on the</p> <p>25 question of whether Highland made loans to</p>	Page 98	Page 99
<p>1 N. Dondero</p> <p>2 promissory note that was signed in favor of</p> <p>3 Highland by one of its affiliates?</p> <p>4 A. Not that I recall, John.</p> <p>5 Q. Prior to the petition date, did</p> <p>6 you or Dugaboy make any effort to try to</p> <p>7 obtain any promissory note that was</p> <p>8 executed by a Highland affiliate in favor</p> <p>9 of Highland?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Do you know if Highland ever</p> <p>12 forgave any obligations under any</p> <p>13 promissory note that was signed on behalf</p> <p>14 of any affiliate?</p> <p>15 A. I have no idea.</p> <p>16 Q. Did you or Dugaboy ever ask</p> <p>17 anybody whether Highland had ever forgiven</p> <p>18 any loan that was given to an affiliate?</p> <p>19 A. Did we – I'm sorry, John, can</p> <p>20 you repeat the question, please?</p> <p>21 Q. Yes.</p> <p>22 Did you or Dugaboy ever ask</p> <p>23 anybody prior to the petition date whether</p> <p>24 Highland had ever forgiven in whole or in</p> <p>25 part any loan that it made to an affiliate?</p>	Page 100	Page 101

<p>1 N. Dondero</p> <p>2 A. Not that I recall.</p> <p>3 Q. Did you or Dugaboy ever ask</p> <p>4 anybody to identify any loan that it ever</p> <p>5 made to an affiliate that was forgiven in</p> <p>6 whole or in part?</p> <p>7 A. Can you restate that, John?</p> <p>8 Q. Sure.</p> <p>9 Did you or Dugaboy ever ask</p> <p>10 anybody to identify a loan that was made by</p> <p>11 Highland to an affiliate that was forgiven</p> <p>12 in whole or in part?</p> <p>13 A. Not that I remember.</p> <p>14 Q. Can you or Dugaboy identify today</p> <p>15 any affiliate that obtained a loan from</p> <p>16 Highland that Highland forgave?</p> <p>17 A. Not that I know of.</p> <p>18 Q. Did you or Dugaboy ever take any</p> <p>19 steps to confirm what your brother told you</p> <p>20 about the practice of forgiving loans?</p> <p>21 A. Did we take any steps?</p> <p>22 Q. Did you do anything?</p> <p>23 A. Not that I am aware of, no.</p> <p>24 Q. Did you ever see any document</p> <p>25 that concerned or related to the practice</p>	Page 102	Page 103
<p>1 N. Dondero</p> <p>2 A. Because it's another one of Jim's</p> <p>3 companies.</p> <p>4 Q. And how did you learn that that</p> <p>5 was another one of Jim's companies?</p> <p>6 A. I don't remember how I learned</p> <p>7 it. It's under the Highland umbrella.</p> <p>8 Q. And when you say that it's one of</p> <p>9 "Jim's companies," what do you mean by</p> <p>10 that?</p> <p>11 A. The beneficial owner.</p> <p>12 Q. And how did you learn that your</p> <p>13 brother was the beneficial owner of HCMS?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form. That's not what she said. She</p> <p>16 said he is a beneficiary owner –</p> <p>17 MR. MORRIS: You can object to</p> <p>18 the question. I appreciate it.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. And you can answer it.</p> <p>21 MS. DEITSCH-PEREZ: Don't</p> <p>22 misstate what she said, please.</p> <p>23 MR. MORRIS: All you do is get to</p> <p>24 object to the question, please. Don't</p> <p>25 coach the witness.</p>	Page 104	Page 105
<p>1 N. Dondero</p> <p>2 your brother described for you whereby</p> <p>3 Highland forgave loans to affiliates?</p> <p>4 A. I do not recall, John, no.</p> <p>5 Q. Did you ever ask to see any</p> <p>6 documents that reflected the practice your</p> <p>7 brother described?</p> <p>8 A. I never asked.</p> <p>9 Q. Give me one second.</p> <p>10 Have you ever heard of an entity</p> <p>11 called Highland Capital Management Services</p> <p>12 Inc.?</p> <p>13 A. Yes.</p> <p>14 Q. Can we refer to that entity as</p> <p>15 HCMS?</p> <p>16 A. Okay.</p> <p>17 Q. Is HCMS an affiliate –</p> <p>18 withdrawn.</p> <p>19 Did you and Dugaboy understand</p> <p>20 that HCMS was an affiliate of Highland's</p> <p>21 prior to the petition date?</p> <p>22 A. Yes.</p> <p>23 Q. And how did you come to</p> <p>24 understand that HCMS was an affiliate of</p> <p>25 Highland prior to the petition date?</p>		

<p>1 N. Dondero</p> <p>2 effort to determine what HCMS's business</p> <p>3 was?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Did you or Dugaboy ever know –</p> <p>6 withdrawn.</p> <p>7 Did you or Dugaboy ever have any</p> <p>8 information concerning HCMS's financial</p> <p>9 condition?</p> <p>10 A. No, not that I'm aware of.</p> <p>11 Q. Did you or Dugaboy ever ask</p> <p>12 anybody for information concerning HCMS's</p> <p>13 financial condition?</p> <p>14 A. No.</p> <p>15 Q. Did you or Dugaboy ever make any</p> <p>16 independent effort to try to determine what</p> <p>17 HCMS's financial condition was?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Do you or Dugaboy know whether</p> <p>20 any agreements exist between HCMS and</p> <p>21 Highland other than any promissory notes?</p> <p>22 A. I don't know.</p> <p>23 Q. Did you or Dugaboy ever ask</p> <p>24 anybody whether any agreements existed</p> <p>25 between Highland and HCMS other than</p>	Page 106	Page 107
<p>1 N. Dondero</p> <p>2 A. Not that I am aware of, John.</p> <p>3 Q. Do you know if HCMS – withdrawn.</p> <p>4 Did you or Dug – withdrawn.</p> <p>5 Did you or Dugaboy know prior to</p> <p>6 the petition date whether HCMS ever</p> <p>7 rendered any services to Highland?</p> <p>8 A. I wouldn't –</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. I wouldn't know.</p> <p>12 MR. MORRIS: Can I have the</p> <p>13 question read back?</p> <p>14 THE REPORTER: Sure.</p> <p>15 (Question was read back as</p> <p>16 follows:</p> <p>17 "QUESTION: Did you or Dugaboy</p> <p>18 know prior to the petition date whether</p> <p>19 HCMS ever rendered any services to</p> <p>20 Highland?"</p> <p>21 "ANSWER: I wouldn't know.")</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Did you or Dugaboy ever ask</p> <p>24 anybody prior to the petition date whether</p> <p>25 HCMS ever rendered any services to</p>	Page 108	Page 109

<p>1 N. Dondero</p> <p>2 A. Okay.</p> <p>3 Q. I'm asking whether prior to the</p> <p>4 petition date, you or Dugaboy were aware of</p> <p>5 any loans that Highland made to HCMS?</p> <p>6 A. Okay. I'm aware of the ones that</p> <p>7 are in question.</p> <p>8 Are you speaking of others?</p> <p>9 Q. I am asking broadly at this time.</p> <p>10 Are you generally aware that</p> <p>11 Highland loaned –</p> <p>12 A. Yes.</p> <p>13 Q. – money to HCMS prior to the</p> <p>14 petition date?</p> <p>15 A. Yes, I am generally aware.</p> <p>16 Q. Okay. Did you and Dugaboy know</p> <p>17 how many loans Highland made to HCMS prior</p> <p>18 to the petition date?</p> <p>19 A. Yes, I believe.</p> <p>20 Q. And how many loans did Highland</p> <p>21 make to HCMS prior to the petition date, to</p> <p>22 the best of your knowledge?</p> <p>23 A. At least five.</p> <p>24 Q. And are those the loans that are</p> <p>25 reflected in the five promissory notes that</p>	<p>Page 110</p> <p>1 N. Dondero</p> <p>2 are the subject of the lawsuit against</p> <p>3 HCMS?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Are you aware of any loans</p> <p>6 that Highland ever made to HCMS that are</p> <p>7 not subject to the lawsuit?</p> <p>8 A. I'm not – I'm not aware, John.</p> <p>9 Q. Did you ever ask – withdrawn.</p> <p>10 Did you or Dugaboy ask at any</p> <p>11 time whether Highland had ever made any</p> <p>12 loans to HCMS that weren't reflected in the</p> <p>13 promissory notes that are the subject of</p> <p>14 the lawsuits?</p> <p>15 A. I don't believe we ever asked.</p> <p>16 Q. Do you know who authorized</p> <p>17 Highland to make the loans to HCMS that</p> <p>18 you're aware of?</p> <p>19 A. Okay. I'm sorry, once again,</p> <p>20 John, the question?</p> <p>21 Q. Did you or Dugaboy know prior to</p> <p>22 the petition date who authorized Highland</p> <p>23 to make the loans to HCMS that are the</p> <p>24 subject of the promissory notes that you</p> <p>25 referred to?</p>	<p>Page 111</p>
<p>1 N. Dondero</p> <p>2 A. Who authorized?</p> <p>3 Q. Yes.</p> <p>4 A. I don't know.</p> <p>5 Q. Do you recall if you or Dugaboy</p> <p>6 asked anybody at any time prior to the</p> <p>7 petition date who authorized Highland to</p> <p>8 make the loans to HCMS?</p> <p>9 A. I don't believe that was asked.</p> <p>10 Q. Okay. Do you have any</p> <p>11 information as to whether HCMS intended to</p> <p>12 pay back each of the loans that are the</p> <p>13 subject of the promissory notes at the time</p> <p>14 the loans were given to them by Highland?</p> <p>15 MS. DEITSCH-PEREZ: Objection.</p> <p>16 No foundation.</p> <p>17 A. John, can you just say the</p> <p>18 question again, please?</p> <p>19 Q. Sure.</p> <p>20 Did you or Dugaboy have any</p> <p>21 information prior to the petition date as</p> <p>22 to whether HCMS intended to repay the loans</p> <p>23 that are the subject of the promissory</p> <p>24 notes that you identified?</p> <p>25 A. No.</p>	<p>Page 112</p> <p>1 N. Dondero</p> <p>2 Q. Okay. Did you or Dugaboy ever</p> <p>3 ask anybody prior to the petition date</p> <p>4 whether HCMS had intended to repay the</p> <p>5 loans at the time and times that it</p> <p>6 obtained them from Highland?</p> <p>7 A. Okay, John, can you ask that</p> <p>8 again?</p> <p>9 Q. Sure.</p> <p>10 Did you or Dugaboy ever ask</p> <p>11 anybody whether HCMS intended to repay the</p> <p>12 loans at the time HCMS obtained them from</p> <p>13 Highland?</p> <p>14 A. I don't believe we asked their</p> <p>15 intent.</p> <p>16 Q. Okay.</p> <p>17 MS. DEITSCH-PEREZ: Whenever –</p> <p>18 we've been going about another hour.</p> <p>19 So whenever is good for you, John.</p> <p>20 MR. MORRIS: Okay. I'm going to</p> <p>21 finish up this section here.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Do you or Dugaboy have any</p> <p>24 knowledge as to why Highland made the loans</p> <p>25 to HCMS?</p>	<p>Page 113</p>

<p>1 N. Dondero</p> <p>2 A. Only assumptions.</p> <p>3 Q. Okay. I don't want assumptions.</p> <p>4 I want information.</p> <p>5 A. Then I don't – then I don't</p> <p>6 know.</p> <p>7 Q. Okay. Do you or Dugaboy ever ask</p> <p>8 anybody why Highland made the loans to HCMS</p> <p>9 that are the subject of the promissory</p> <p>10 notes you referred to?</p> <p>11 A. No.</p> <p>12 Q. Did you or Dugaboy ever make any</p> <p>13 effort to try to determine why Highland</p> <p>14 made the loans to HCMS?</p> <p>15 A. No, not that I remember.</p> <p>16 Q. Did you or Dugaboy know prior to</p> <p>17 the petition date what HCMS did with the</p> <p>18 proceeds of the loans that it obtained from</p> <p>19 Highland?</p> <p>20 A. I don't know, John.</p> <p>21 Q. Did you or Dugaboy ever ask</p> <p>22 anybody at any time prior to the petition</p> <p>23 date what HCMS did with the proceeds of the</p> <p>24 loans that it obtained from Highland?</p> <p>25 A. No.</p>	Page 114	<p>1 N. Dondero</p> <p>2 Q. Did you or Dugaboy ever make any</p> <p>3 effort to determine what HCMS did with the</p> <p>4 proceeds of the loans that it obtained from</p> <p>5 Highland?</p> <p>6 A. No.</p> <p>7 Q. You're aware that HCMS issued</p> <p>8 promissory notes in favor of Highland in</p> <p>9 exchange for the loans, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Prior to the petition date, did</p> <p>12 you ever see any promissory note that was</p> <p>13 issued by HCMS in favor of Highland?</p> <p>14 A. Prior to October of '19?</p> <p>15 Q. Correct.</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you recall whether you or</p> <p>18 Dugaboy asked at any time prior to the</p> <p>19 petition date to see promissory notes that</p> <p>20 were executed on behalf of HCMS in favor of</p> <p>21 Highland?</p> <p>22 A. I don't know.</p> <p>23 Q. Do you recall whether you or</p> <p>24 Dugaboy made any effort at any time prior</p> <p>25 to the petition date to obtain copies of</p>	Page 115
<p>1 N. Dondero</p> <p>2 promissory notes that were issued by HCMS</p> <p>3 in favor of Highland?</p> <p>4 A. I don't believe so.</p> <p>5 Q. Prior to the petition date, were</p> <p>6 you and Dugaboy aware of the terms of the</p> <p>7 promissory notes that HCMS issued in favor</p> <p>8 of Highland?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. Can you be more specific? Just</p> <p>12 the terms of the loan, John?</p> <p>13 Q. Yes.</p> <p>14 Did you and Dugaboy know the</p> <p>15 terms of the loans that were reflected in</p> <p>16 the promissory notes?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. Okay. And who gave you the</p> <p>19 information regarding the terms of the</p> <p>20 loans that HCMS obtained from Highland?</p> <p>21 A. Jim.</p> <p>22 Q. Do you remember anything about</p> <p>23 the terms of the loans that HCMS obtained</p> <p>24 from Highland?</p> <p>25 A. Regarding – you mean the term?</p>	Page 116	<p>1 N. Dondero</p> <p>2 There's 30-year. There's demand.</p> <p>3 Q. You tell me.</p> <p>4 You described five promissory</p> <p>5 notes, I think, that were executed by HCMS</p> <p>6 in favor of Highland, right?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. And I believe you</p> <p>9 testified that you didn't see those notes</p> <p>10 prior to the petition date, correct?</p> <p>11 A. Right. Well, yeah, I'm a little</p> <p>12 vague on the date; but, yes, I don't</p> <p>13 believe I saw them prior to – so right,</p> <p>14 prior to the petition date, correct.</p> <p>15 Um-hmm.</p> <p>16 Q. But did you or Dugaboy –</p> <p>17 withdrawn.</p> <p>18 Did you and Dugaboy have an</p> <p>19 understanding of the terms of the notes</p> <p>20 prior to the petition date?</p> <p>21 A. Yes. From what I understand, my</p> <p>22 recollection is several of them were</p> <p>23 demand, and one was 30-year.</p> <p>24 Q. And do you have an understanding</p> <p>25 of what it means – of what a demand notice</p>	Page 117

<p>1 N. Dondero  2 is?  3 MS. DEITSCH-PEREZ: Object to the  4 form.  5 A. Payable upon demand.  6 Q. Okay. So you knew prior to the  7 petition date that certain of the notes  8 issued by HCMS to Highland were demand  9 notes; is that right?  10 A. Yes.  11 Q. Okay.  12 MR. MORRIS: All right. I'm  13 happy to take a break now. Hopefully  14 it won't be as long as the last one.  15 But we can go off the record.  16 THE VIDEOGRAPHER: The time is  17 12:00 p.m. We are going off the  18 record.  19 (Recess is taken.)  20 (Patrick Daugherty not in  21 attendance at this time.)  22 THE VIDEOGRAPHER: The time is  23 12:16. Back on the record.  24 BY MR. MORRIS:  25 Q. Ms. Dondero, did you communicate</p>	<p>Page 118</p> <p>1 N. Dondero  2 with anybody during your break regarding  3 any aspect of your testimony?  4 A. No, sir.  5 Q. Okay. Have you ever heard of an  6 entity called HCRE Partners LLC?  7 A. Yes, sir.  8 Q. Do you understand that HCRE is an  9 affiliate of Highland?  10 A. I do.  11 Q. Okay. And what was the – what  12 is the basis of your understanding that  13 HCRE – withdrawn. I should have put a  14 time frame on this.  15 Is it your understanding that  16 HCRE was an affiliate of Highland prior to  17 the petition date?  18 A. Yes, sir.  19 Q. And what is the basis for your  20 understanding?  21 A. They were under the Highland  22 umbrella prior to October of '19.  23 Q. And to the best of your  24 knowledge, does HCRE fit the definition of  25 affiliate that you provided earlier today?</p>
<p>1 N. Dondero  2 MS. DEITSCH-PEREZ: Objection.  3 A. Yes.  4 Q. Do you know the nature of HCRE's  5 business?  6 A. I believe it's real estate.  7 Q. Do you or Dugaboy have any  8 information about the nature of HCRE's  9 business other than it's real estate?  10 A. No.  11 Q. Did you or Dugaboy ever ask  12 anybody what the nature of HCRE's business  13 was?  14 A. No.  15 Q. Did you or Dugaboy ever make any  16 effort to ascertain the nature of HCRE's  17 business?  18 A. Not that I recall.  19 Q. Did you or Dugaboy know whether  20 HCRE had any agreements with Highland prior  21 to the petition date?  22 MS. DEITSCH-PEREZ: Object to the  23 form.  24 MR. MORRIS: Withdrawn.  25 BY MR. MORRIS:</p>	<p>Page 120</p> <p>1 N. Dondero  2 Q. Do you or Dugaboy know whether  3 HCRE had any agreements with Highland prior  4 to the petition date other than the  5 promissory notes?  6 A. Other than the promissory notes,  7 no.  8 Q. Did you or Dugaboy ever ask  9 anybody at any time prior to the petition  10 date whether HCRE had any agreements with  11 Highland other than the promissory notes?  12 A. No.  13 Q. Did you or Dugaboy make any  14 effort prior to the petition date to  15 ascertain whether any agreements existed  16 between Highland and HCRE other than the  17 promissory notes?  18 A. Not that I recall.  19 Q. Do you know – withdrawn.  20 Did you or Dugaboy know prior to  21 the petition date whether HCRE had ever  22 rendered any services to Highland?  23 MS. DEITSCH-PEREZ: Object to the  24 form.  25 A. I don't know.</p>

<p>1 N. Dondero</p> <p>2 Q. Did you or Dugaboy ever ask</p> <p>3 anybody prior to the petition date whether</p> <p>4 HCRE ever rendered any services to</p> <p>5 Highland?</p> <p>6 A. I don't believe so.</p> <p>7 Q. Did you or Dugaboy make any</p> <p>8 effort to ascertain prior to the petition</p> <p>9 date whether HCRE ever rendered any</p> <p>10 services to Highland?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. I'm sorry, John, can you repeat</p> <p>14 that, please, the question?</p> <p>15 Q. Did you or Dugaboy make any</p> <p>16 effort prior to the petition date to</p> <p>17 determine whether or not HCRE had ever</p> <p>18 provided any services to Highland?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I don't believe so.</p> <p>22 Q. Are you aware -- withdrawn.</p> <p>23 Did you or Dugaboy know prior to</p> <p>24 the petition date whether Highland had ever</p> <p>25 loaned any money to HCRE?</p>	Page 122	Page 123
<p>1 N. Dondero</p> <p>2 question again, please?</p> <p>3 Q. Sure.</p> <p>4 Did you or Dugaboy know prior to</p> <p>5 the petition date who authorized Highland</p> <p>6 to make the loans to HCRE?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. I don't know.</p> <p>10 Q. Did you or Dugaboy ever ask</p> <p>11 anybody prior to the petition date who</p> <p>12 authorized Highland to make the loans to</p> <p>13 HCRE that are reflected in the promissory</p> <p>14 notes you referred to?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. No.</p> <p>18 Q. Did you or Dugaboy ever make any</p> <p>19 effort to ascertain who had authorized</p> <p>20 Highland to make the loans to HCRE that are</p> <p>21 reflected in the promissory notes you</p> <p>22 referred to?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Did you or Dugaboy have any</p> <p>25 information prior to the petition date as</p>	Page 124	Page 125

<p>1 N. Dondero  2 in the promissory notes?  3 A. No, no idea.  4 Q. Did you or Dugaboy attempt to  5 obtain prior to the petition date any  6 information concerning the purpose of the  7 loans that were made by Highland to HCRC  8 that were reflected in the promissory  9 notes?  10 A. I don't believe so.  11 Q. Did you or Dugaboy make any  12 effort to ascertain the purpose of the  13 loans that Highland made to HCRC?  14 A. I don't believe so.  15 Q. Did you or Dugaboy know prior to  16 the petition date what HCRC did with the  17 proceeds of the loans that it obtained from  18 Highland in exchange for the promissory  19 notes?  20 A. We don't know.  21 Q. Did you or Dugaboy ever ask  22 anybody what HCRC did with the proceeds of  23 the loans that it obtained from Highland in  24 exchanged from the promissory notes?  25 A. I don't believe we did.</p>	<p>Page 126</p> <p>1 N. Dondero  2 Q. Did you or Dugaboy ever make any  3 effort prior to the petition date to  4 ascertain what HCRC did with the proceeds  5 of the loans that it obtained from Highland  6 that are reflected in the promissory notes?  7 A. No.  8 Q. Did you ever see – withdrawn.  9 Did you or Dugaboy ever see prior  10 to the petition – withdrawn. Not good.  11 Too many questions.  12 Did you or Dugaboy – withdrawn.  13 Prior to the petition date, did  14 you or Dugaboy ever see any promissory note  15 that was executed by HCRC in favor of  16 Highland?  17 A. Not that I recall.  18 Q. Prior to the petition date, did  19 you or Dugaboy ever ask anybody to see any  20 promissory note that was issued by HCRC in  21 favor of Highland?  22 A. Not that I recall.  23 Q. Prior to the petition date, did  24 you or Dugaboy make any effort to try to  25 obtain any promissory note that was ever</p>
<p>1 N. Dondero  2 executed on behalf of HCRC in favor of  3 Highland?  4 A. No.  5 Q. Prior to the petition date, did  6 you and Dugaboy know the terms of any of  7 the promissory notes that were issued by  8 HCRC to Highland?  9 A. Yes.  10 Q. And how did you learn of the  11 terms of the notes?  12 A. From Jim.  13 Q. And what did Jim tell you about  14 the terms of the notes that were issued by  15 HCRC to Highland?  16 A. He mentioned the 30-year demand,  17 the dates, the amounts.  18 Q. Okay. Did you do – withdrawn.  19 Did you or Dugaboy take any steps  20 to try to corroborate what your brother  21 told you concerning the terms of the notes  22 that were issued by HCRC to Highland?  23 A. Not that I recall.  24 Q. Okay. Did you have any source of  25 information for the terms of the notes</p>	<p>Page 128</p> <p>1 N. Dondero  2 other than what your brother gave to you?  3 A. I don't believe so.  4 Q. Okay. Last one. NexPoint.  5 Are you familiar with an entity  6 called NexPoint Advisors LP?  7 A. Yes.  8 Q. Can we refer to that entity as  9 NexPoint?  10 A. Yes.  11 Q. Is it your understanding that  12 NexPoint was an affiliate of Highland's  13 prior to the petition date, as you've used  14 the term "affiliate"?</p> <p>15 A. Um-hmm. Yes.  16 Q. And what's the basis for your  17 understanding that prior to the petition  18 date, NexPoint was an affiliate of  19 Highland?  20 A. Because Jim is a beneficial  21 owner.  22 Q. Is it your understanding that Jim  23 is a beneficial owner of all of the  24 defendants in each of the promissory note  25 lawsuits?</p>

<p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: Can I answer?</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Yes.</p> <p>7 A. Yes, that is my belief, John.</p> <p>8 Q. Do you have any reason to believe</p> <p>9 Jim is not a beneficial owner of any</p> <p>10 corporate defendant in any of the lawsuits?</p> <p>11 A. No, I have no reason to believe</p> <p>12 that.</p> <p>13 Q. Prior to the petition date, did</p> <p>14 you or Dugaboy know the nature of</p> <p>15 NexPoint's business?</p> <p>16 A. I'm not really sure.</p> <p>17 Q. Do you know the nature of</p> <p>18 NexPoint's business today?</p> <p>19 A. I'm not sure.</p> <p>20 Q. Did you or Dugaboy ever ask</p> <p>21 anybody at any time what the nature of</p> <p>22 NexPoint's business was?</p> <p>23 A. I don't believe we did.</p> <p>24 Q. Did you or Dugaboy make any</p> <p>25 effort at any time to try to learn what the</p>	Page 130	Page 131
<p>1 N. Dondero</p> <p>2 between Highland and NexPoint other than</p> <p>3 the promissory notes?</p> <p>4 A. Not that I'm aware of.</p> <p>5 Q. Did you or Dugaboy know prior to</p> <p>6 the petition date whether NexPoint ever</p> <p>7 rendered any services to Highland?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. I don't know.</p> <p>11 Q. Did you or Dugaboy ever ask</p> <p>12 anybody at any time prior to the petition</p> <p>13 date whether NexPoint had ever rendered any</p> <p>14 services to Highland?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. I'm sorry, John. Can you repeat</p> <p>18 the question, please?</p> <p>19 Q. Sure.</p> <p>20 Did you and Dugaboy ask anybody</p> <p>21 at any time prior to the petition date</p> <p>22 whether NexPoint had ever rendered any</p> <p>23 services to Highland?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. Did you and Dugaboy make any</p>	Page 132	Page 133

<p>1 N. Dondero</p> <p>2 promissory notes that NexPoint issued that</p> <p>3 are the subject of this lawsuit?</p> <p>4 A. Yeah. John, can we back up a</p> <p>5 question?</p> <p>6 Q. Absolutely.</p> <p>7 A. Are you talking about the notes</p> <p>8 – yeah, please.</p> <p>9 Are you talking about the notes,</p> <p>10 part of this proceeding or are you not?</p> <p>11 Q. I'm starting – that's okay. Let</p> <p>12 me –</p> <p>13 A. Because obviously there is the</p> <p>14 NexPoint promissory note that we are</p> <p>15 talking about. When I answered the way I</p> <p>16 did, it was regarding others that I'm not</p> <p>17 aware of. I'm aware of the one obviously</p> <p>18 in this proceeding.</p> <p>19 Q. Okay. Thank you for the –</p> <p>20 A. Does that clarify?</p> <p>21 Q. It does. It is helpful. Thank</p> <p>22 you very much.</p> <p>23 Other than the one – how many</p> <p>24 NexPoint notes do you understand are the</p> <p>25 subject of these litigations?</p>	<p>Page 134</p> <p>1 N. Dondero</p> <p>2 A. One.</p> <p>3 Q. Okay. Other than that one note,</p> <p>4 are you aware of any other promissory notes</p> <p>5 that NexPoint ever issued in favor of</p> <p>6 Highland?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. No, I'm not aware of any other.</p> <p>10 Q. Did you ask anybody – withdrawn.</p> <p>11 Did you or Dugaboy ask anybody</p> <p>12 prior to the petition date whether NexPoint</p> <p>13 had issued any other promissory notes in</p> <p>14 favor of Highland other than the one that's</p> <p>15 the subject of the lawsuit?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Did you or Dugaboy know prior to</p> <p>18 the petition date whether Highland had made</p> <p>19 any loan to NexPoint other than the loan</p> <p>20 that's reflected in the promissory note?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. I'm not aware of any.</p> <p>24 Q. Do you know how much the</p> <p>25 promissory – do you know the principal</p>
<p>1 N. Dondero</p> <p>2 amount of – withdrawn.</p> <p>3 Do you know the – withdrawn.</p> <p>4 Did you and Dugaboy know the</p> <p>5 principal amount of NexPoint's promissory</p> <p>6 note prior to the petition date?</p> <p>7 A. Yes.</p> <p>8 Q. And how did you learn that?</p> <p>9 A. From Jim.</p> <p>10 Q. And what did Jim tell you that</p> <p>11 you can recall?</p> <p>12 A. 30 million thereabouts, in that</p> <p>13 neighborhood.</p> <p>14 Q. Do you know how many principal</p> <p>15 was owed as of the petition date?</p> <p>16 A. It's paid down by, oh, about a</p> <p>17 third, so it's somewhere 22, 23 million, I</p> <p>18 believe, in that ballpark.</p> <p>19 Q. Okay. And how did you learn that</p> <p>20 NexPoint had paid down the principal to</p> <p>21 that ballpark?</p> <p>22 A. I'm not sure.</p> <p>23 Q. Do you recall when you learned</p> <p>24 that NexPoint had paid down the principal</p> <p>25 to that ballpark?</p>	<p>Page 136</p> <p>1 N. Dondero</p> <p>2 A. Not exactly.</p> <p>3 Q. Okay. But you are aware that</p> <p>4 NexPoint paid approximately 7 to 8 million</p> <p>5 dollars in principal on the note that's the</p> <p>6 subject of the lawsuit, correct?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. Yes, it was somewhere in that</p> <p>10 ballpark. Sure.</p> <p>11 Q. Okay. Did you and Dugaboy know</p> <p>12 prior to the petition date who authorized</p> <p>13 Highland to make the loan to NexPoint?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 A. No, I don't know.</p> <p>17 Q. Did you or Dugaboy prior to the</p> <p>18 petition date ask anybody who had</p> <p>19 authorized Highland to make the \$30 million</p> <p>20 loan to NexPoint?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Did you or Dugaboy make any</p> <p>23 effort prior to the petition date to</p> <p>24 determine who had authorized Highland to</p> <p>25 make the \$30 million loan to NexPoint?</p>

<p>1 N. Dondero</p> <p>2 A. Not that I recall.</p> <p>3 Q. Do you have any reason to believe</p> <p>4 that NexPoint did not intend to pay all</p> <p>5 principal and interest due under the</p> <p>6 promissory note at the time that it</p> <p>7 obtained the loan from Highland?</p> <p>8 A. I have no reason to believe they</p> <p>9 weren't intending to pay.</p> <p>10 Q. Did you have any reason to</p> <p>11 believe – withdrawn.</p> <p>12 Do you or Dugaboy have any reason</p> <p>13 to believe that Highland wasn't not</p> <p>14 expecting to get repaid all principal and</p> <p>15 interest due under the loan at the time it</p> <p>16 made the loan?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form. Actually, can somebody –</p> <p>19 Annette, could you read that</p> <p>20 back? There were a double negative or</p> <p>21 two.</p> <p>22 MR. MORRIS: Okay. Let me</p> <p>23 rephrase the question. That's fine.</p> <p>24 That's fine.</p> <p>25 BY MR. MORRIS:</p>	Page 138	Page 139
<p>1 N. Dondero</p> <p>2 the proceeds of the loan?</p> <p>3 A. No, I don't know.</p> <p>4 Q. Did you or Dugaboy ever ask</p> <p>5 anybody prior to the petition date what</p> <p>6 NexPoint did with the proceeds of the loan?</p> <p>7 A. We did not.</p> <p>8 Q. Did you or Dugaboy know prior to</p> <p>9 the petition date that the \$30 million loan</p> <p>10 was a rollup of previously existing loans</p> <p>11 that Highland had made to NexPoint?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. I was not aware of that.</p> <p>15 Q. Are you aware today that the \$30</p> <p>16 million loan was a roll up of previously</p> <p>17 existing notes?</p> <p>18 A. I didn't, no.</p> <p>19 Q. Did you ever see the promissory</p> <p>20 note that was issued by NexPoint in favor</p> <p>21 of Highland that's the subject of one of</p> <p>22 these notes – litigations?</p> <p>23 A. I don't remember. That was in</p> <p>24 '17, correct, John?</p> <p>25 Q. I'm just asking if – let me ask</p>	Page 140	Page 141

<p>1 N. Dondero  2 issued in favor of Highland?  3 A. 30-year.  4 Q. It was a 30-year note?  5 A. Um-hmm.  6 Q. Do you recall anything else about  7 that note?  8 A. I believe it was 2017.  9 Q. Okay.  10 A. And the amounts we already  11 discussed.  12 Q. Do you know who determined that  13 the promissory note would be a 30-year  14 term?  15 A. I do not.  16 Q. Do you know who on behalf of  17 Highland agreed to accept a 30-year note  18 from NexPoint?  19 MS. DEITSCH-PEREZ: Object to the  20 form.  21 A. I don't know, John.  22 Q. Did you or Dugaboy make an effort  23 at any time prior to the petition date to  24 determine whether or not a 30-year term was  25 appropriate?</p>	<p>Page 142</p> <p>1 N. Dondero  2 MS. DEITSCH-PEREZ: Object to the  3 form.  4 A. No.  5 Q. Did you or Dugaboy ask anybody at  6 any time prior to the petition date whether  7 a 30-year term was appropriate?  8 MS. DEITSCH-PEREZ: Object to the  9 form.  10 A. Not that I recall.  11 Q. Did you or Dugaboy know prior to  12 the petition date whether the \$30 million  13 note was the subject of any negotiation  14 between NexPoint and Highland?  15 MS. DEITSCH-PEREZ: Object to the  16 form.  17 A. I didn't know.  18 Q. Did you or Dugaboy ask anybody at  19 any time prior to the petition date whether  20 the \$30 million note was subject to  21 negotiation?  22 A. Subject to negotiation? Can you  23 elaborate? What negotiation?  24 Q. Are you aware of anybody on  25 behalf of Highland suggesting that the term</p>
<p>1 N. Dondero  2 of the note should be something other than  3 30 years?  4 A. No. Changing that term, no, I'm  5 not familiar.  6 Q. Okay. Let's switch topics and  7 I'll cover this topic and then we can take  8 a lunch break.  9 I'd like to turn now to the  10 limited partnership agreement, the LP  11 agreement as I think we've defined it. And  12 I'm going to ask my colleague to put up on  13 the screen – I don't think it's in the  14 binder that I gave you.  15 MS. DEITSCH-PEREZ: Yes, it is.  16 MR. MORRIS: Oh, is it?  17 MS. DEITSCH-PEREZ: It is?  18 MR. MORRIS: What number is it?  19 MS. DEITSCH-PEREZ: It is number  20 2, it looks like.  21 MR. MORRIS: So we'll put it up  22 on the screen and then you can look at  23 the hard copy.  24 MS. DEITSCH-PEREZ: Okay. Is  25 there a particular page you want to</p>	<p>Page 144</p> <p>1 N. Dondero  2 turn to?  3 MR. MORRIS: Let's just start  4 with this.  5 BY MR. MORRIS:  6 Q. Do you understand –  7 MS. DEITSCH-PEREZ: Hang on a  8 minute. One second.  9 Okay. We're good. We've got it.  10 BY MR. MORRIS:  11 Q. Okay. Are you looking at the  12 document that is Exhibit 4 that's attached  13 to the document that's been denoted as  14 number 2?  15 MS. DEITSCH-PEREZ: Yes.  16 Turn to the page before the one  17 that says –  18 THE WITNESS: Oh, okay.  19 A. So page 4 of 37?  20 Q. Yes.  21 (Document review.)  22 A. Okay.  23 Q. All right.  24 A. Okay. Go ahead.  25 Q. At the top, do you see it says</p>

<p>1 N. Dondero</p> <p>2 Document 63-4 in the middle?</p> <p>3 A. Yes, I do.</p> <p>4 Q. And you're at page 2 of 37,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Do you understand that</p> <p>8 this is the document we defined earlier as</p> <p>9 the LP agreement?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Have you seen this document</p> <p>12 before now?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall when you saw this</p> <p>15 document for the first time?</p> <p>16 A. Shortly after it was made, when I</p> <p>17 was trustee.</p> <p>18 Q. Okay. Do you recall the</p> <p>19 circumstances under which you saw the LP</p> <p>20 agreement for the first time?</p> <p>21 A. No, I don't remember the</p> <p>22 circumstance.</p> <p>23 Q. Do you have a copy of the LP</p> <p>24 agreement in your personal possession?</p> <p>25 Like other than right now, did you have it</p>	Page 146	Page 147
<p>1 N. Dondero</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: And I apologize La</p> <p>4 Asia, but can we go now to Section</p> <p>5 3.10?</p> <p>6 We're going to mark it. This one</p> <p>7 is Exhibit 2. Don't worry that we are</p> <p>8 going out of order. They're premarked.</p> <p>9 So this document we're going to mark as</p> <p>10 Exhibit 2.</p> <p>11 (N. Dondero Exhibit 2, Amended</p> <p>12 Complaint for (I) Breach of Contract,</p> <p>13 (II) Turnover of Property, (III)</p> <p>14 Fraudulent Transfer, and (IV) Breach of</p> <p>15 Fiduciary Duty, marked for</p> <p>16 identification, as of this date.)</p> <p>17 MS. DEITSCH-PEREZ: Did I miss</p> <p>18 Exhibit 1?</p> <p>19 MR. MORRIS: No.</p> <p>20 MS. DEITSCH-PEREZ: Okay.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you see Section 3.10? Do you</p> <p>23 have that in front of you?</p> <p>24 A. Yes.</p> <p>25 Q. Have you seen that provision of</p>	Page 148	Page 149

<p>1 N. Dondero  2 partners. I apologize.  3 Q. And what is the basis for that  4 understanding?  5 A. Because the class A limited  6 partners is the majority interest. Holds  7 – I'm sorry, holds the majority interest.  8 Q. And did you ever discuss that  9 with anybody at any time?  10 MS. DEITSCH-PEREZ: And I'm going  11 to direct her to ask exclude any  12 discussions with lawyers. So other –  13 MR. MORRIS: Let me rephrase the  14 question. Let me rephrase the  15 question.  16 BY MR. MORRIS:  17 Q. Did you ever discuss the  18 definition of majority interest with  19 anybody at any time prior to the petition  20 date?  21 A. I don't recall.  22 Q. Do you believe that Dugaboy holds  23 a majority interest, as that term is used  24 in Section 3.10?  25 A. Yes, I do believe that.</p>	<p>Page 150</p> <p>1 N. Dondero  2 Q. And did you believe that prior to  3 the petition date?  4 A. Yes.  5 Q. What was the basis for your  6 belief prior to the petition date that  7 Dugaboy held a majority interest?  8 A. I was told that Dugaboy held the  9 majority interest.  10 Q. And who told you that Dugaboy  11 held the majority interest?  12 A. Melissa Schroth.  13 Q. Do you recall when Ms. Schroth  14 told you that?  15 A. Shortly after I became trustee.  16 Q. And can you tell me who Melissa  17 Schroth is?  18 A. Melissa is a financial assistant  19 with Jim.  20 Q. And you communicated with  21 Ms. Schroth on a regular basis prior to the  22 petition date; is that fair?  23 A. Correct.  24 Q. Do you know, is Ms. Schroth a  25 lawyer?</p>
<p>1 N. Dondero  2 A. I don't believe so.  3 Q. Do you know anything about her  4 background or expertise?  5 A. Accounting, I believe.  6 Q. Did you ever do anything to  7 corroborate what Ms. Schroth told you about  8 Dugaboy being a majority interest?  9 A. I had no reason to disbelieve  10 her.  11 Q. But you didn't do anything to  12 corroborate that; is that right?  13 A. I did not, sir.  14 Q. Did you seek any advice from  15 anybody to ascertain whether what  16 Ms. Schroth told you was accurate?  17 A. I don't recall.  18 Q. Okay. Do you see at the end of  19 Section 3.10, there is a reference to NAV  20 trigger period?  21 A. Yes.  22 Q. Do you have an understanding –  23 withdrawn.  24 Did you have an understanding  25 prior to the petition date of what a NAV</p>	<p>Page 152</p> <p>1 N. Dondero  2 trigger period was?  3 A. No.  4 Q. Did you ever ask anybody prior to  5 the petition date what a NAV trigger period  6 was?  7 A. I don't believe so.  8 Q. Did you or Dugaboy make any  9 effort prior to the petition date to  10 ascertain whether a NAV trigger period had  11 occurred?  12 A. I don't believe so.  13 Q. Did you or Dugaboy ever know  14 prior to the petition date whether in fact  15 a NAV trigger period had ever occurred?  16 A. I don't think so.  17 Q. All right.  18 MR. MORRIS: I think if it's okay  19 with you guys, now might be a nice time  20 to take a lunch break.  21 I prefer that it not be too  22 extended. Would it be okay if we came  23 back at the bottom of the hour?  24 THE WITNESS: 1:30, would that be  25 okay?</p>

<p>1 N. Dondero</p> <p>2 MR. MORRIS: Yeah, 1:30 Central.</p> <p>3 Is that good?</p> <p>4 THE WITNESS: That would be</p> <p>5 great. Thank you.</p> <p>6 MR. MORRIS: Thanks so much.</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 12:54. We're going off the record.</p> <p>9 (Recess is taken.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	Page 154	Page 155
		<p>1 N. Dondero</p> <p>2 AFTERNON SESSION</p> <p>3 (Time noted: 1:35 p.m.)</p> <p>4 THE VIDEOGRAPHER: The time is</p> <p>5 1:35. We are back on the record.</p> <p>6 * * *</p> <p>7 NANCY DONDERO, resumed and</p> <p>8 testified as follows:</p> <p>9 EXAMINATION BY (Cont'd.)</p> <p>10 MR. MORRIS:</p> <p>11 Q. Ms. Dondero, are you ready to</p> <p>12 proceed?</p> <p>13 A. I am.</p> <p>14 MR. MORRIS: Are you Deborah?</p> <p>15 MS. DEITSCH-PEREZ: (Nodding.)</p> <p>16 MR. MORRIS: Okay. Thank you.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Can you hear me okay?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. I've switched from my</p> <p>21 phone to my computer. Somehow it worked.</p> <p>22 Now I wanted to make sure you can hear me.</p> <p>23 Ms. Dondero, did you speak to</p> <p>24 anybody during the break about the</p> <p>25 substance of your testimony?</p>
<p>1 N. Dondero</p> <p>2 A. No, sir.</p> <p>3 Q. Did you speak to anybody during</p> <p>4 the break regarding the substance of this</p> <p>5 deposition in any way?</p> <p>6 A. No, sir.</p> <p>7 Q. Okay. When we left, we had just</p> <p>8 looked at Section 3.10 of the LP agreement.</p> <p>9 Do you remember that?</p> <p>10 A. Yes.</p> <p>11 Q. Is there anything about the LP</p> <p>12 agreement that you -- withdrawn.</p> <p>13 Is there anything that you or</p> <p>14 Dugaboy don't understand about Section 3.10</p> <p>15 of the LP agreement?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. You can answer.</p> <p>20 A. No.</p> <p>21 Q. Is there any aspect of Section</p> <p>22 3.10 that you and Dugaboy thinks is</p> <p>23 ambiguous?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	Page 156	Page 157
		<p>1 N. Dondero</p> <p>2 A. No.</p> <p>3 Q. Let's switch gears now and let's</p> <p>4 talk about the oral agreement that's been</p> <p>5 referred to in this litigation.</p> <p>6 I'd like to put up on the screen</p> <p>7 a document that you don't have a hard copy</p> <p>8 of, or at least I didn't give it to you,</p> <p>9 and that would be the Amended Complaint</p> <p>10 that was served by Highland against you and</p> <p>11 your brother and Dugaboy.</p> <p>12 MR. MORRIS: And that document</p> <p>13 we're marking for purposes of the</p> <p>14 deposition as Exhibit No. 31.</p> <p>15 (N. Dondero Exhibit 31, Defendant</p> <p>16 James Donder's Answer to Amended</p> <p>17 Complaint, marked for identification,</p> <p>18 as of this date.)</p> <p>19 MR. MORRIS: Can we put that on</p> <p>20 the screen, please, and turn to</p> <p>21 paragraph 82?</p> <p>22 Actually, stop right there.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Ms. Dondero, have you ever seen,</p> <p>25 if we can scroll up -- and, again, this is</p>

<p>1 N. Dondero  2 consistent with what I explained to you at  3 the beginning of the deposition.  4 I don't mean to rush you. I  5 think you should take all the time you need  6 to look at this document if you want to,  7 but my first question is simply whether you  8 have ever seen this document before. And  9 if you need to see more of it, just let me  10 know.  11 (Document review.)  12 A. Can you scroll to the next page,  13 John, please?  14 Q. Sure.  15 (Document review.)  16 MS. DEITSCH-PEREZ: I have a hard  17 copy here I could give the witness.  18 Do you want me to do that?  19 MR. MORRIS: Sure.  20 BY MR. MORRIS:  21 Q. And just for clarity,  22 Ms. Dondero, this is the Amended Complaint  23 that Highland served to collect on the  24 notes that were issued by your brother.  25 A. Okay.</p>	<p>Page 158</p> <p>1 N. Dondero  2 MS. CANTY: John, I'm sorry. 31  3 is actually the answer to the Amended  4 Complaint.  5 MR. MORRIS: I'm sorry. I  6 apologize that. Let me restate that.  7 Exhibit 31 is the answer,  8 Mr. Dondero's answer to the Amended  9 Complaint.  10 MS. DEITSCH-PEREZ: All right.  11 So what are you asking if she has seen?  12 I was going to hand her the complaint.  13 MR. MORRIS: It's my mistake,  14 Deborah. If we can go back to – if we  15 can go back to the top.  16 Let me start this over.  17 BY MR. MORRIS:  18 Q. Do you see, Ms. Dondero, that  19 this is defendant James Dondero's answer to  20 Amended Complaint?  21 A. Yes, I see that.  22 Q. Have you ever seen your brother's  23 answer to the Amended Complaint?  24 A. I don't remember if I've seen  25 this or not. Deborah just gave me a hard</p>
<p>1 N. Dondero  2 copy. Can I have a quick minute to glance  3 over it?  4 Q. Sure. Take your time. And let  5 me know at the top of it, what the docket  6 number is.  7 A. Certainly.  8 Docket No. DOC 83 –  9 Q. Okay. Perfect.  10 A. – filed on December 3rd.  11 Is that it?  12 Q. Yes. So we are looking at the  13 same thing.  14 MR. MORRIS: And this document is  15 going to be marked as Exhibit 31.  16 A. Okay.  17 Q. All right. Have you seen this  18 document before?  19 A. I think so.  20 Q. Okay.  21 MR. MORRIS: I'm going to ask, La  22 Asia go to paragraph 82.  23 A. Okay.  24 Q. Do you see paragraph 82 is up on  25 the screen?</p>	<p>Page 160</p> <p>1 N. Dondero  2 A. Yes, sir.  3 Q. So I'm going to read a portion of  4 it to you beginning at the very top, okay?  5 I just want you to follow along  6 with me.  7 Paragraph 82 says in part,  8 "Plaintiff's claims are barred in whole or  9 in part because prior to the demands for  10 payment, plaintiff agreed that it would not  11 collect the notes upon fulfillment of  12 condition subsequent. Specifically,  13 sometime between December of the year in  14 which each note was made and February the  15 following year, Defendant Nancy Dondero, as  16 representative for a majority of the Class  17 A shareholders of plaintiff agreed that  18 plaintiff would forgive the notes if  19 certain portfolio companies were sold for  20 greater than cost or on a basis outside of  21 defendant James Dondero's control. The  22 purpose of this agreement was to provide  23 compensation to defendant James Dondero,  24 who was otherwise underpaid compared to  25 reasonable compensation levels in the</p>

<p>1 N. Dondero  2 industry through the use of forgivable  3 loans, a practice that was standard at  4 HCMLP and in the industry."</p> <p>5 Have I read that correctly?</p> <p>6 A. Um-hmm, yes.</p> <p>7 Q. Okay. To the best of your  8 knowledge, is the portion of paragraph 82  9 that I just read true and accurate?</p> <p>10 A. Yes. Correct.</p> <p>11 Q. Are you aware, as Dugaboy's  12 30(b)(6) witness, that HCRE, HCMS, and  13 NexPoint all make the same allegation in  14 defense?</p> <p>15 A. Yes.</p> <p>16 Q. So is it your testimony that the  17 statement that I just read from paragraph  18 82 applies to the promissory notes issued  19 by HCRE, HCMS, and NexPoint, and that are  20 the subject of the lawsuits?</p> <p>21 A. Yes.</p> <p>22 Q. So it's your testimony that you  23 entered into oral agreements with your  24 brother between December and the year each  25 note was made, and February of the</p>	<p>Page 162</p> <p>1 N. Dondero  2 following year, pursuant to which plaintiff  3 agreed that plaintiff would forgive the  4 notes if certain portfolio companies were  5 sold for greater than cost or on a basis  6 outside of James Dondero's control,  7 correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Can we refer to each of the oral  10 agreements that you entered into with your  11 brother concerning the promissory notes  12 that are described in paragraph 82 as an  13 agreement and collectively as the  14 agreements?</p> <p>15 A. Certainly.</p> <p>16 MS. DEITSCH-PEREZ: Okay. And  17 just, John, just so I don't have to  18 object each time, when you say "you,"  19 you're talking about Dugaboy?</p> <p>20 MR. MORRIS: I'm talking about  21 both unless I say otherwise. But thank  22 you for pointing that out.</p> <p>23 MS. DEITSCH-PEREZ: Okay.</p> <p>24 MR. DRAPER: John, just so you  25 know, to the extent that -- hold on.</p>
<p>1 N. Dondero  2 I'm muted.</p> <p>3 To the extent Deborah raises an  4 objection for the "you," Nancy, as a  5 trustee, I'm not going to say anything,  6 but my objection is a follow-on for the  7 same thing, for the same reasons.</p> <p>8 MR. MORRIS: Okay. I appreciate  9 that, Douglas.</p> <p>10 So I'm going to ask the question  11 again.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Is it your testimony that you, as  14 the trustee of The Dugaboy Investment  15 Trust, entered into oral agreements with  16 your brother between December and the year  17 each note was made and February of the  18 following year, pursuant to which plaintiff  19 agreed that plaintiff would forgive the  20 notes if certain portfolio companies were  21 sold for greater than cost or on a basis  22 outside of James Dondero's control?</p> <p>23 A. That is correct.</p> <p>24 Q. Okay. And can we refer to each  25 of the oral agreements that are the subject</p>	<p>Page 164</p> <p>1 N. Dondero  2 of paragraph 82 individually as an  3 agreement and collectively as the  4 agreements?</p> <p>5 A. Um-hmm. Yes.</p> <p>6 Q. Is that a yes?</p> <p>7 A. Yes. That is a yes. Sorry.</p> <p>8 Q. And do you and Dugaboy understand  9 that the phrase "plaintiff" in paragraph 82  10 refers to Highland?</p> <p>11 A. Yes.</p> <p>12 Q. And do you and Dugaboy understand  13 that Dugaboy, as the representative of a  14 majority of the Class A shareholders of  15 Highland is the actual entity that entered  16 into the agreements on behalf of Highland?</p> <p>17 A. Yes.</p> <p>18 Q. And you are the trustee of  19 Dugaboy today, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And you were the trustee of  22 Dugaboy at the time each of the agreements  23 referred to in paragraph 82 was entered  24 into, correct?</p> <p>25 A. Correct.</p>

<p>1 N. Dondero</p> <p>2 Q. And you personally caused Dugaboy</p> <p>3 to enter into each agreement that is</p> <p>4 referred to in paragraph 82, correct?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. You can answer.</p> <p>9 MS. DEITSCH-PEREZ: I'm sorry,</p> <p>10 John, can you repeat the question,</p> <p>11 please?</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. You personally caused Dugaboy to</p> <p>14 enter into each of the agreements that's</p> <p>15 referred to in paragraph 82, correct?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. Correct.</p> <p>19 Q. What is Dugaboy?</p> <p>20 A. The trust, the living</p> <p>21 maintenance, education, and health trust.</p> <p>22 Q. Do you know when it was formed?</p> <p>23 A. 2010.</p> <p>24 Q. Have you been the trustee of the</p> <p>25 Dugaboy Trust since the time it was</p>	Page 166	Page 167
<p>1 N. Dondero</p> <p>2 A. Jim had asked me to.</p> <p>3 Q. Did Jim ask you to be the Dugaboy</p> <p>4 trustee at around the same time that you</p> <p>5 became the trustee?</p> <p>6 A. That's correct.</p> <p>7 Q. Prior to accepting Jim's –</p> <p>8 withdrawn.</p> <p>9 Did you agree to become the</p> <p>10 trustee at the Dugaboy Trust in response to</p> <p>11 Jim's request?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. Before you accepted the</p> <p>14 appointment as trustee of the Dugaboy</p> <p>15 Trust, did you obtain any information about</p> <p>16 the purpose of the Dugaboy Trust?</p> <p>17 A. Yes.</p> <p>18 Q. What information do you recall</p> <p>19 obtaining before you agreed to serve as the</p> <p>20 trustee at the Dugaboy Trust?</p> <p>21 A. The purpose of the trust is to</p> <p>22 provide health, education, maintenance,</p> <p>23 lifestyle for the beneficiaries, who is my</p> <p>24 brother, for as long as he lives and then</p> <p>25 his children and subsequent generations.</p>	Page 168	Page 169

<p>1 N. Dondero</p> <p>2 Q. You entered into more than one</p> <p>3 agreement with your brother; is that right?</p> <p>4 A. That's correct.</p> <p>5 Q. How many agreements did you enter</p> <p>6 into with him?</p> <p>7 A. Okay. How many notes or how many</p> <p>8 agreements – you mean, per – one per year</p> <p>9 for three years covering 13 notes.</p> <p>10 Q. So there's three annual</p> <p>11 agreements that you recall? Do I have that</p> <p>12 right?</p> <p>13 A. Correct.</p> <p>14 Q. And was Dugaboy's interest in</p> <p>15 Highland the same at each moment that you</p> <p>16 entered into each of the three agreements?</p> <p>17 A. I'm sorry?</p> <p>18 Q. Do you know whether – do you</p> <p>19 know whether Dugaboy's interest in Highland</p> <p>20 changed at all between the time that you</p> <p>21 entered into each of the three agreements</p> <p>22 that you just referred to?</p> <p>23 A. I don't know. I don't think so.</p> <p>24 Q. Did you ever ask anybody at any</p> <p>25 time prior to the petition date if</p>	<p>Page 170</p> <p>1 N. Dondero</p> <p>2 Dugaboy's interest in Highland changed at</p> <p>3 any time during the period in which you</p> <p>4 were entering into these agreements on</p> <p>5 behalf of Dugaboy?</p> <p>6 A. No.</p> <p>7 And, John, can I back up for a</p> <p>8 second?</p> <p>9 Q. Sure.</p> <p>10 A. Just in answer to one of my</p> <p>11 questions when I said that I had three</p> <p>12 conversations with Jim. That pertained to</p> <p>13 this procedure. That's my answer for this</p> <p>14 scope.</p> <p>15 Q. Right.</p> <p>16 A. Okay. Just so we're on the same</p> <p>17 page. Okay. Okay.</p> <p>18 Q. And do you recall – we'll get to</p> <p>19 it.</p> <p>20 All right. So you entered into</p> <p>21 three agreements.</p> <p>22 Do I have that right?</p> <p>23 A. Correct.</p> <p>24 Q. And do you recall when you</p> <p>25 entered into each one of the three</p>
<p>1 N. Dondero</p> <p>2 agreements?</p> <p>3 A. To the best of my recollection,</p> <p>4 it was around the holidays.</p> <p>5 Q. Do you remember the year you</p> <p>6 entered into the first agreement?</p> <p>7 A. It would have been either been</p> <p>8 the tail end of '17, beginning of '18.</p> <p>9 Q. And would the second agreement be</p> <p>10 the tail of '18, the beginning of '19?</p> <p>11 A. Correct, sir.</p> <p>12 Q. And would the third one be the</p> <p>13 tail of '19 and the beginning of '20?</p> <p>14 A. Either/or. Correct. Um-hmm.</p> <p>15 Q. Okay. And when we say late in</p> <p>16 each year, is paragraph 82 correct, to the</p> <p>17 best of your knowledge, that it was either</p> <p>18 December of the year or the following</p> <p>19 January or February?</p> <p>20 A. Correct.</p> <p>21 Q. So it's your recollection that as</p> <p>22 the trustee of The Dugaboy Investment</p> <p>23 Trust, you entered into an agreement</p> <p>24 pursuant to 3.10 of the LP agreement in</p> <p>25 either December 2019 or January or February</p>	<p>Page 172</p> <p>1 N. Dondero</p> <p>2 of 2020?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So you entered into that</p> <p>5 third agreement after the petition date.</p> <p>6 Do I have that right?</p> <p>7 A. That's correct.</p> <p>8 Q. Do you recall that there came a</p> <p>9 time in January of 2020 when your brother</p> <p>10 relinquished control of Highland in favor</p> <p>11 of an independent board?</p> <p>12 A. January of '20, yes. Um-hmm.</p> <p>13 Q. Do you recall if the agreement</p> <p>14 that you entered into in late 2019 or early</p> <p>15 2020 occurred before or after your brother</p> <p>16 surrendered control of Highland?</p> <p>17 A. I believe it was before.</p> <p>18 Q. So sometime in December of 2019</p> <p>19 or prior to the date in January when your</p> <p>20 brother surrendered control, you and your</p> <p>21 brother entered into the third in the</p> <p>22 series of three oral agreements that are</p> <p>23 referred to in paragraph 82, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Do you recall what the</p>

<p>1 N. Dondero</p> <p>2 terms of each of the oral agreements was?</p> <p>3 A. They were all the same, the</p> <p>4 agreements. Obviously for different notes.</p> <p>5 But the terms were that the notes would be</p> <p>6 forgiven if any of the three portfolio</p> <p>7 companies that we discussed earlier,</p> <p>8 Trussway, Cornerstone, MGM, would monetize</p> <p>9 at a higher value, and then the notes would</p> <p>10 be forgiven and considered deferred</p> <p>11 compensation.</p> <p>12 Q. And when you say a higher value,</p> <p>13 did you understand at the time you entered</p> <p>14 into the agreements what higher value</p> <p>15 meant?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. What does higher value</p> <p>18 mean in the context of the agreements that</p> <p>19 you entered into with your brother?</p> <p>20 A. Higher than the purchase price.</p> <p>21 Q. So do I have this correct that if</p> <p>22 one of the three portfolio companies was</p> <p>23 sold for a value that exceeded the cost by</p> <p>24 at least one dollar, then all of the notes</p> <p>25 that were subject to the agreements would</p>	Page 174	<p>1 N. Dondero</p> <p>2 be forgiven?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. Can you identify the</p> <p>5 promissory notes that were the subject of</p> <p>6 each of the three agreements?</p> <p>7 A. I don't understand by identified,</p> <p>8 John. In your book or –</p> <p>9 Q. Are you able to list for me the</p> <p>10 promissory notes --</p> <p>11 A. Sure –</p> <p>12 Q. Let me finish the question,</p> <p>13 please.</p> <p>14 Are you able to list for me the</p> <p>15 promissory notes that were the subject of</p> <p>16 each of the three agreements?</p> <p>17 A. In 2017, there were four notes:</p> <p>18 One to NexPoint, two to HCRE, I believe,</p> <p>19 and one to HCMS. I don't have specifics,</p> <p>20 but I believe the four of them originally</p> <p>21 totaled somewhere near 60 million, in that</p> <p>22 ballpark, when they were originally set up.</p> <p>23 That was 2017.</p> <p>24 MS. DEITSCH-PEREZ: John, we have</p> <p>25 a list.</p>	Page 175
<p>1 N. Dondero</p> <p>2 Do you want her to do this from</p> <p>3 memory or do you want her to look –</p> <p>4 MR. MORRIS: I don't. I'm going</p> <p>5 to try it a different way, Deborah.</p> <p>6 MS. DEITSCH-PEREZ: Okay.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Is there – did the three oral</p> <p>9 agreements with your brother –</p> <p>10 A. Yes?</p> <p>11 Q. – cover all of the promissory</p> <p>12 notes that are subject of the lawsuits in</p> <p>13 which are a defendant?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know if any of the three</p> <p>16 agreements you entered into with your</p> <p>17 brother cover any promissory notes that are</p> <p>18 not the subject of the lawsuits in which</p> <p>19 you are a defendant?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 A. I don't believe they do.</p> <p>23 Q. Okay. So to the best of your</p> <p>24 knowledge, as the person who caused Dugaboy</p> <p>25 to enter into these agreements on behalf of</p>	Page 176	<p>1 N. Dondero</p> <p>2 Highland, you do not believe that your</p> <p>3 agreements covered any promissory note that</p> <p>4 is the subject of the lawsuits that have</p> <p>5 been commenced against you, correct?</p> <p>6 MS. DEITSCH-PEREZ: Wait. Can</p> <p>7 you – I think you – can you have the</p> <p>8 court reporter read it back so you can</p> <p>9 hear it? Because either I heard it</p> <p>10 wrong or you misspoke, I think.</p> <p>11 THE REPORTER: I can read it</p> <p>12 back, if you'd like.</p> <p>13 MR. MORRIS: Sure.</p> <p>14 MS. DEITSCH-PEREZ: Yeah,</p> <p>15 Annette, can you read it back?</p> <p>16 THE REPORTER: Sure.</p> <p>17 (Question was read back as</p> <p>18 follows:</p> <p>19 "QUESTION: Okay. So to the best</p> <p>20 of your knowledge, as the person who</p> <p>21 caused Dugaboy to enter into these</p> <p>22 agreements on behalf of Highland, you</p> <p>23 do not believe that your agreements</p> <p>24 covered any promissory note that is the</p> <p>25 subject of the lawsuits that have been</p>	Page 177

<p>1 N. Dondero  2 commenced against you, correct?"  3 MR. MORRIS: All right. Let me  4 ask the question again. Let me ask the  5 question again.  6 MS. DEITSCH-PEREZ: Okay.  7 BY MR. MORRIS:  8 Q. Ms. Dondero, as the person who  9 caused Dugaboy to enter into the agreements  10 described in paragraph 82 on behalf of  11 Highland, do you have any reason to believe  12 that those agreements related to any  13 promissory notes that are not the subject  14 of the lawsuits that have been commenced  15 against you and Dugaboy?  16 A. No.  17 Q. Okay.  18 A. I believe they include the notes  19 that we've been referring to, that we've  20 been talking to about all day, John.  21 Q. Okay. Did you or Dugaboy ever  22 make a list of the promissory notes that  23 were the subject of each agreement –  24 withdrawn.  25 Prior to the petition date, did</p>	<p>Page 178</p> <p>1 N. Dondero  2 you or Dugaboy ever make a list of the  3 promissory notes that were the subject of  4 each agreement?  5 MS. DEITSCH-PEREZ: Object to the  6 form.  7 A. I don't recall.  8 Q. You have no recollection of you  9 or Dugaboy ever writing down the promissory  10 notes that were the subject of any of the  11 three oral agreements that Dugaboy entered  12 into with your brother, correct?  13 A. I don't believe I did.  14 Q. And you don't believe Dugaboy did  15 either, right?  16 MS. DEITSCH-PEREZ: Object to the  17 form.  18 A. Correct.  19 Q. Are you or Dugaboy aware of  20 anything in writing that identifies –  21 withdrawn.  22 Are you and Dugaboy aware of  23 anything that was written prior to the  24 petition date that identified the  25 promissory notes that were the subject of</p>	<p>Page 179</p>
<p>1 N. Dondero  2 each agreement that was entered into?  3 A. Am I aware of anything that was  4 written down not by me?  5 Q. Right.  6 A. Nothing that I can recall at this  7 time.  8 Q. How do you know that the  9 promissory notes that are the subject of  10 the lawsuits against you were all subject  11 to the oral agreements that you entered  12 into on behalf of Dugaboy with your  13 brother?  14 A. Of the 13 notes in total, we  15 discussed 4 and 17; 6 and 18; and 3 in 19,  16 and that's total, if I'm not mistaken, the  17 13 notes in question.  18 Q. Okay. Now neither you nor  19 Dugaboy ever saw any of the notes prior to  20 the petition date, correct?  21 MS. DEITSCH-PEREZ: Object to the  22 form.  23 A. That's correct.  24 Q. And neither you nor Dugaboy are  25 aware of any writing that was created prior</p>	<p>Page 180</p> <p>1 N. Dondero  2 to the petition date that identified the  3 promissory notes that were the subject of  4 the agreements between Dugaboy and your  5 brother, correct?  6 A. That is correct.  7 Q. So are you basing your belief  8 that the agreements covered only the  9 promissory notes that are the subject of  10 the lawsuits on your memory or on anything  11 else?  12 MS. DEITSCH-PEREZ: Object to the  13 form.  14 MR. MORRIS: Withdrawn.  15 BY MR. MORRIS:  16 Q. What is the basis for your belief  17 that the agreements covered the promissory  18 notes that are the subject of each – of  19 the lawsuits against you and Dugaboy?  20 A. Because I remember what we  21 discussed.  22 Q. So you have a memory. You  23 remember that three to four years ago, you  24 can remember the promissory notes that were  25 the subject of your first agreement even</p>	<p>Page 181</p>

<p>1 N. Dondero</p> <p>2 though you never saw the notes? Do I have</p> <p>3 that right?</p> <p>4 A. I remember the amount. I don't</p> <p>5 remember all the specifics from that many</p> <p>6 years ago, John, but I do remember the</p> <p>7 amount per each year, and I knew that there</p> <p>8 were 13 in total.</p> <p>9 Q. Who identified the notes that</p> <p>10 would be the subject of the agreements? Do</p> <p>11 you recall?</p> <p>12 A. In what context who identified</p> <p>13 them?</p> <p>14 Q. Well, the agreement was entered</p> <p>15 into twin in your capacity as the trustee</p> <p>16 of Dugaboy and your brother, correct?</p> <p>17 A. Correct.</p> <p>18 Q. As between you and your brother,</p> <p>19 did one of you identify the notes that</p> <p>20 would be the subject of the agreements?</p> <p>21 A. Yes, that would be –</p> <p>22 Q. And who identified – okay. And</p> <p>23 who was that?</p> <p>24 A. Jim.</p> <p>25 Q. And during these three</p>	Page 182	Page 183
<p>1 N. Dondero</p> <p>2 MR. MORRIS: I'd like to put up</p> <p>3 on the screen a document that's been</p> <p>4 marked as Exhibit 43.</p> <p>5 (N. Dondero Exhibit 43,</p> <p>6 Promissory Note, Bates-stamped</p> <p>7 D-CNL000550 through 551, marked for</p> <p>8 identification, as of this date.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. And do you see, Ms. Dondero, that</p> <p>11 this is a promissory note dated January 18,</p> <p>12 2018, in the amount of \$7,900,000?</p> <p>13 MR. MORRIS: And if we can scroll</p> <p>14 to the bottom so we could see the</p> <p>15 signature.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Do you see that that's been</p> <p>18 signed by your brother?</p> <p>19 A. I see that.</p> <p>20 Q. Have you ever seen this</p> <p>21 particular promissory note before?</p> <p>22 MR. MORRIS: And we can go back</p> <p>23 to the top.</p> <p>24 (Document review.)</p> <p>25 A. It doesn't look familiar, John.</p>	Page 184	Page 185

<p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. John, can you repeat the</p> <p>5 question, please?</p> <p>6 Q. Sure.</p> <p>7 At the time that you entered into</p> <p>8 the agreements, did you have any</p> <p>9 understanding that the agreements would</p> <p>10 cover all notes executed by your brother,</p> <p>11 NexPoint, HCRE and HCMS?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Was it your understanding</p> <p>14 that all promissory notes would be covered?</p> <p>15 MS. DEITSCH-PEREZ: Do you mean</p> <p>16 all of the ones at issue here or all,</p> <p>17 like, including –</p> <p>18 MR. MORRIS: No.</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 MR. MORRIS: I thought I was</p> <p>22 clear, but I'll try it one more time.</p> <p>23 MS. DEITSCH-PEREZ: Please.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Was it your understanding that</p>	Page 186	Page 187
<p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Okay. Got</p> <p>3 it. No.</p> <p>4 A. Um-hmm.</p> <p>5 Q. When you say "um-hmm," what could</p> <p>6 you mean?</p> <p>7 A. I'm sorry, John. The</p> <p>8 conversation got me away from the question.</p> <p>9 I'm sorry. I'm sorry.</p> <p>10 MS. DEITSCH-PEREZ: It's my</p> <p>11 fault.</p> <p>12 THE WITNESS: I'm sorry.</p> <p>13 A. Go ahead, John.</p> <p>14 MR. MORRIS: Can I have the last</p> <p>15 question read back, please.</p> <p>16 THE REPORTER: Sure.</p> <p>17 (Question was read back as</p> <p>18 follows:</p> <p>19 "QUESTION: Okay. So there may</p> <p>20 be other notes that Jim or NexPoint or</p> <p>21 HCRE or HCMS, there may be other notes</p> <p>22 that they executed, but if there are,</p> <p>23 they were not the subject of any of</p> <p>24 your agreements with your brother,</p> <p>25 correct?"</p>	Page 188	Page 189

<p>1 N. Dondero</p> <p>2 borrower and the lender in each of these</p> <p>3 transactions?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. I'm sorry, I thought I answered.</p> <p>7 No.</p> <p>8 Q. Yeah, the first question was</p> <p>9 whether you had any concerns. And the</p> <p>10 second question was did it ever occur to</p> <p>11 you.</p> <p>12 Did you understand that?</p> <p>13 A. I did.</p> <p>14 It didn't occur to me, and I</p> <p>15 didn't have any concern.</p> <p>16 Q. Okay. And I think you just</p> <p>17 mentioned that your recollection is that</p> <p>18 two of the agreements were reached on the</p> <p>19 telephone, and one was reached in person;</p> <p>20 is that right?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. The agreement that was</p> <p>23 reached in person, where were you?</p> <p>24 A. Florida.</p> <p>25 Q. Where at?</p>	Page 190	Page 191
<p>1 N. Dondero</p> <p>2 withdrawn.</p> <p>3 So there were three agreements;</p> <p>4 is that correct?</p> <p>5 A. Through this discussion?</p> <p>6 Q. Yes.</p> <p>7 A. There are three agreements, yes.</p> <p>8 Q. And all three agreements are oral</p> <p>9 agreements, correct?</p> <p>10 A. They're all oral. One in person</p> <p>11 and two on the phone, yes.</p> <p>12 Q. Okay. Were there any</p> <p>13 communications concerning the scope or term</p> <p>14 or terms of the proposed agreement that</p> <p>15 took place before the day on which the</p> <p>16 agreements were entered into?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. I just want to know if there were</p> <p>21 any conversations or communications that</p> <p>22 occurred prior to the entry of the three</p> <p>23 agreements.</p> <p>24 A. There could have been, John.</p> <p>25 Q. I know there could have been.</p>	Page 192	Page 193

<p>1 N. Dondero  2 business, about work. And Jim would bring  3 up the loans that were done earlier in the  4 year.  5 He had stated in the conversation  6 that he thought he was undercompensated for  7 the work that he does and the time that he  8 puts in. And he wanted those loans to be  9 forgiven if any of the three portfolio  10 companies that we talked about monetized at  11 a higher value.  12 Q. And you agreed with that?  13 A. Well, it was – yes, I did agree  14 with that proposal. I thought it was a  15 win-win for everybody.  16 Q. Did you ever propose any  17 alternative to the proposal that your  18 brother made that you just described?  19 A. I did not.  20 Q. Can you identify any provision of  21 any of the agreements that you negotiated  22 with your brother?  23 A. I didn't negotiate, but Jim had  24 concern, and rightfully so, that he would  25 put in the work and the time and the effort</p>	<p>Page 194</p> <p>1 N. Dondero  2 to increase the value of any of those  3 portfolio companies and that factors that  4 you mention you beyond his control might  5 cause them to be sold at a value under the  6 price that was paid for them and this deal  7 would not happen.  8 So hence, that part of the deal  9 came up, but I don't know if I'd consider  10 it a negotiation.  11 MR. MORRIS: Okay. I'm going to  12 move to strike.  13 BY MR. MORRIS:  14 Q. And I'm just going to ask you if  15 you can identify any provision of any of  16 the agreements that you recall being the  17 subject of negotiation?  18 A. I don't recall any part being a  19 negotiation.  20 Q. Who identified the portfolio  21 companies that were the subject of each  22 agreement?  23 A. Jim.  24 Q. Did you ask your brother why he  25 selected those companies?</p>	Page 195
<p>1 N. Dondero  2 A. No.  3 Q. Do you know why your brother  4 selected those companies?  5 A. I do not.  6 Q. Did you ever suggest that  7 different portfolio companies should be  8 used?  9 A. I did not.  10 Q. Did you ask him if Highland had  11 any other portfolio companies?  12 A. I don't know.  13 Q. And your brother is the person  14 who proposed that all of the notes would be  15 forgiven if one of the three portfolio  16 companies was sold for greater than cost;  17 is that right?  18 A. That's correct.  19 Q. Do you know whether your brother  20 had a duty to maximize value at the time  21 that you entered into the agreements with  22 him?  23 A. I don't know.  24 Q. Did you ever ask anybody prior to  25 entering into any of the agreements whether</p>	<p>Page 196</p> <p>1 N. Dondero  2 your brother already had a duty to maximize  3 value?  4 A. I did not.  5 Q. Did you ever make a  6 counterproposal to the term of the  7 agreement that said all of the notes would  8 be forgiven if one of the portfolio  9 companies was sold for greater than cost?  10 A. I'm sorry, John. Once again, the  11 question, please?  12 Q. Sure.  13 Did you or Dugaboy ever make a  14 counterproposal to the provision in the  15 agreements that all of the notes would be  16 forgiven if one of the portfolio companies  17 was sold above cost?  18 A. Wasn't that his proposal? Jim's  19 proposal?  20 Q. It was his proposal. I think  21 you've testified to that. And I'm asking  22 you if you or Dugaboy ever made a  23 counterproposal with respect to that  24 particular provision?  25 A. No.</p>	Page 197

<p>1 N. Dondero</p> <p>2 Q. Did you ever consider requiring a 3 higher threshold other than having a sale 4 above cost for the triggering of the 5 condition subsequent?</p> <p>6 A. No.</p> <p>7 Q. Was there any part of your 8 brother's proposal that you rejected?</p> <p>9 A. No.</p> <p>10 Q. Was there any part of your 11 brother's proposal that Dugaboy rejected?</p> <p>12 A. No.</p> <p>13 Q. Is there any aspect of any of the 14 agreements that incorporates a proposal or 15 idea that you or Dugaboy made?</p> <p>16 MS. DEITSCH-PEREZ: Object to the 17 form.</p> <p>18 A. No.</p> <p>19 Q. Now do you recall that paragraph 20 82 also provides that all of the notes 21 would be forgiven if any of the portfolio 22 companies was sold on a basis out of Jim 23 Dondero's control?</p> <p>24 A. Yes.</p> <p>25 Q. Whose idea was it to include that</p>	Page 198	Page 199
<p>1 N. Dondero</p> <p>2 Q. So you're aware that somebody 3 other than your brother may sell Highland's 4 interest in the portfolio companies; is 5 that right?</p> <p>6 A. Correct.</p> <p>7 Q. So under the agreements that you 8 caused Dugaboy to enter into on behalf of 9 Highland, all of the notes that were 10 subject to the agreements will be forgiven 11 at the moment somebody other than your 12 brother sells one of the portfolio 13 companies.</p> <p>14 Do I have that right?</p> <p>15 A. I'm sorry, John. Once again?</p> <p>16 Q. Okay. I just want to understand, 17 you know, the import of the agreements that 18 you've described. So let me try again.</p> <p>19 Under the agreements that you 20 caused Dugaboy to enter into on behalf of 21 Highland, all of the notes that are subject 22 to the agreements will be forgiven the 23 moment that any of those three portfolio 24 companies are sold.</p> <p>25 Do I have that right?</p>	Page 200	Page 201
<p>1 N. Dondero</p> <p>2 provision in the agreement?</p> <p>3 A. I thought I already stated that.</p> <p>4 That Jim had concerns. That was Jim's 5 proposal.</p> <p>6 Q. Okay. Did you or Dugaboy reject 7 that proposal?</p> <p>8 A. We did not.</p> <p>9 Q. Did you push back on that 10 proposal at all?</p> <p>11 A. No.</p> <p>12 Q. Did either you or Dugaboy make 13 any counterproposal to that aspect of the 14 agreement?</p> <p>15 A. No.</p> <p>16 Q. Do you understand that James 17 Seery is in control of the portfolio 18 companies subject to the agreement?</p> <p>19 MS. DEITSCH-PEREZ: Object to the 20 form.</p> <p>21 A. I didn't know that.</p> <p>22 Q. Are you aware that your brother 23 no longer controls the portfolio companies 24 that were the subject of the agreement?</p> <p>25 A. Yes.</p>		

<p>1 N. Dondero</p> <p>2 above cost –</p> <p>3 A. Above cost?</p> <p>4 Q. Above cost.</p> <p>5 – would the notes still be</p> <p>6 forgiven?</p> <p>7 A. Yes, of course.</p> <p>8 Q. And if the portfolio companies</p> <p>9 are sold at a price substantially below</p> <p>10 cost, will the notes still be forgiven?</p> <p>11 A. They will if they're sold by</p> <p>12 somebody that's not my brother, that's not</p> <p>13 Jim.</p> <p>14 Q. Okay.</p> <p>15 A. If somebody comes in or – who</p> <p>16 did you say, that gentleman that now has</p> <p>17 control of them, if he decides to sell them</p> <p>18 below cost, the notes are still forgiven.</p> <p>19 Q. And if he decides to sell them</p> <p>20 above cost, the notes are forgiven, right?</p> <p>21 A. That is correct, but Highland</p> <p>22 would benefit.</p> <p>23 Q. How does Highland benefit because</p> <p>24 some third party sells the assets?</p> <p>25 A. Okay. That's not what I said.</p>	Page 202	Page 203
<p>1 N. Dondero</p> <p>2 time you entered into the agreements?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 MR. MORRIS: Withdrawn.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Did you and Dugaboy understand</p> <p>8 that Mr. Dondero had the ability to sell</p> <p>9 any of the portfolio companies at the time</p> <p>10 you entered into the agreements?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. If your brother –</p> <p>13 A. That was my understanding.</p> <p>14 Q. Okay. And if your brother sold</p> <p>15 one of those portfolio companies for a</p> <p>16 dollar above cost, what benefit would</p> <p>17 Highland receive if the consequence of that</p> <p>18 was the forgiveness of more than \$60</p> <p>19 million in principal amount of promissory</p> <p>20 notes?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. John?</p> <p>24 Q. Yes?</p> <p>25 A. Oh.</p>	Page 204	Page 205
<p>1 N. Dondero</p> <p>2 But to answer your question, they</p> <p>3 wouldn't – if it got sold for less than</p> <p>4 the value of them, then Highland wouldn't</p> <p>5 benefit. But that wouldn't be in Jim's</p> <p>6 control.</p> <p>7 Q. Did you expect Highland to</p> <p>8 benefit if the portfolio companies were</p> <p>9 sold on a basis outside of Mr. Dondero's</p> <p>10 control?</p> <p>11 A. I have no idea, John.</p> <p>12 Q. Did you have any idea – did you</p> <p>13 or Dugaboy have any idea when you entered</p> <p>14 into the agreement if Highland would</p> <p>15 benefit from the sale of the portfolio</p> <p>16 companies on a basis outside of</p> <p>17 Mr. Dondero's control?</p> <p>18 A. I wouldn't know that.</p> <p>19 Q. Okay. Now if Jim sold one of</p> <p>20 those portfolio companies for a dollar</p> <p>21 above cost, all of the notes would have</p> <p>22 been forgiven, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And did he have the ability to</p> <p>25 sell any of the portfolio companies at the</p>		

<p>1 N. Dondero  2 and received in return the forgiveness of  3 all of these notes, right?  4 A. Correct.  5 Q. Okay. As the trustee of Dugaboy  6 who entered into the agreement on behalf of  7 Highland, what benefit would there be to  8 Highland if the portfolio companies were  9 sold at any price less than the aggregate  10 principal amount of the notes?  11 A. Less than?  12 Q. Let's say it was sold for \$50  13 million above cost, then Highland would  14 have had to forgive more than \$60 million  15 of notes, correct?  16 A. Correct.  17 Q. How would Highland benefit by  18 having an asset sold \$50 million above cost  19 where the consequence was that they would  20 forgive more than \$50 million of money that  21 was owed to it?  22 A. Well, I looked at it differently,  23 John. And I thought it benefitted Highland  24 at the time because money didn't come out  25 of Highland's balance sheets to increase</p>	Page 206	Page 207
<p>1 N. Dondero  2 your brother paid back loans at times that  3 Highland needed the money – withdrawn.  4 Is it your testimony that your  5 brother made payments against the loans  6 after entering into the agreements with you  7 because Highland needed the money?  8 A. That's my belief, John.  9 Q. Okay. And what is the basis for  10 that belief?  11 A. I don't have one except I know  12 how my brother works.  13 Q. Do you know that your brother  14 caused the borrowers under the promissory  15 notes to make payments against those notes  16 after entering into the agreements with  17 you?  18 A. I do not.  19 Q. Did you ever ask anybody?  20 A. I did not.  21 Q. And I think we covered this  22 earlier, but I just want to try and cover  23 it quickly before we take the break.  24 At the time you entered into each  25 of the agreements, neither you nor Dugaboy</p>	Page 208	Page 209

<p>1 N. Dondero  2 the value of Highland's interest in the  3 three portfolio companies, correct?  4 MS. DEITSCH-PEREZ: Object to the  5 form.  6 A. That's correct, John.  7 Q. And at the time that you entered  8 into these three agreements, neither you  9 nor Dugaboy knew whether the value of  10 Highland's interest in the three portfolio  11 companies was more or less than the cost of  12 acquisition, correct?  13 A. That's correct.  14 MR. MORRIS: We can take that  15 break now if you'd like.  16 MR. DRAPER: John, this is  17 Douglas.  18 How much more do you think you  19 have?  20 THE VIDEOGRAPHER: The time is  21 2:41. We are going off the record.  22 (Recess is taken.)  23 THE VIDEOGRAPHER: The time is  24 2:57. We are back on the record.  25 MR. MORRIS: Can we put back up</p>	Page 210	Page 211
<p>1 N. Dondero  2 reasonable compensation levels in the  3 industry other than what your brother told  4 you?  5 A. No.  6 Q. Okay. Did Dugaboy have any basis  7 for believing that your brother was  8 underpaid compared to reasonable  9 compensation levels in the industry other  10 than what your brother said?  11 A. Not that I'm aware of.  12 Q. Prior to entering into each of  13 these three agreements, did you or Dugaboy  14 make any effort to ascertain whether your  15 brother was underpaid compared to  16 reasonable compensation levels in the  17 industry?  18 A. Not that I remember.  19 Q. At the time that you entered into  20 these agreements, neither you nor Dugaboy  21 knew the total compensation package that  22 Mr. Dondero received from Highland in any  23 calendar year, correct?  24 A. John, can you ask that question  25 again, please?</p>	Page 212	Page 213

<p>1 N. Dondero  2 compensation, including any profit sharing,  3 including any distributions, total  4 compensation, right?  5 Do you see that this is referring  6 not to salary but to compensation?  7 A. I do.  8 Q. Okay.  9 A. And I would not have known that.  10 Q. Okay. So let me ask the question  11 again just to make sure it's clear.  12 At the time that you caused  13 Dugaboy to enter into each of these three  14 agreements, neither you nor Dugaboy knew  15 what Mr. Dondero's compensation was from  16 Highland for any particular year, correct?  17 A. Correct.  18 Q. And at the time that you caused  19 Dugaboy to enter into the three agreements,  20 neither you nor Dugaboy ever asked anybody  21 what Mr. Dondero's compensation was from  22 Highland for any particular year, correct?  23 A. Correct.  24 Q. And at the time you caused  25 Dugaboy to enter into these three</p>	<p>Page 214</p> <p>1 N. Dondero  2 agreements, neither you nor Dugaboy made  3 any effort to try to ascertain what  4 Mr. Dondero's compensation from Highland  5 was in any particular year, correct?  6 A. That's correct.  7 Q. Okay. Did you or Dugaboy ever  8 conduct any analysis of what reasonable  9 compensation levels in the industry were?  10 A. Not that I recall.  11 Q. Did Mr. Dondero ever tell you  12 what he thought reasonable compensation  13 levels were in the industry?  14 A. John, I vaguely remember him  15 throwing out examples of other people in  16 his position and the astronomical money  17 that they make. I just don't remember  18 their names or the companies.  19 Q. Okay. Did you or Dugaboy make  20 any effort at any time prior to entering  21 into the three agreements to determine what  22 reasonable compensation levels were in the  23 industry?  24 A. No.  25 Q. Did you or Dugaboy reach any</p>	<p>Page 215</p>
<p>1 N. Dondero  2 conclusions prior to entering into the  3 agreements as to whether Mr. Dondero was  4 underpaid compared to reasonable  5 compensation levels in the industry?  6 A. The first part of that, John?  7 The first part of your question?  8 Q. Did you or Dugaboy reach any  9 conclusions prior to entering into the  10 three agreements as to whether your brother  11 in fact was underpaid compared to  12 reasonable compensation levels in the  13 industry?  14 A. Yes, I came to the conclusion  15 that he was based on what he told me.  16 Q. Okay. And you had no other  17 information upon which you relied to reach  18 your conclusion that he was underpaid  19 except for the information that your  20 brother provided to you, correct?  21 A. That's correct.  22 Q. Okay. And other than – okay.  23 MR. MORRIS: We can take that  24 down. Thank you.  25 BY MR. MORRIS:</p>	<p>Page 216</p> <p>1 N. Dondero  2 Q. Ms. Dondero, do you know if the  3 terms of any of the agreements were ever  4 reduced to writing?  5 A. I didn't put them in writing.  6 That's all I can speak to.  7 Q. Have you ever seen the terms of  8 any of the agreements in writing?  9 A. I have not.  10 Q. Did anyone ever tell you that the  11 terms of the agreements were written down  12 anywhere?  13 A. Not that I recall.  14 Q. Did you or Dugaboy ever ask  15 anyone if the terms of the agreements were  16 written down anywhere?  17 A. Not that I remember.  18 Q. Did you believe that these  19 agreements were important at the time that  20 you caused Dugaboy to enter into them?  21 A. Yes.  22 Q. Why did you think that these  23 agreements were important?  24 A. I think I thought they were  25 important because they gave Highland the</p>	<p>Page 217</p>

<p>1 N. Dondero  2 chance to motivate and get Jim – or give  3 Jim an extra incentive to make the  4 portfolio companies into something really  5 magnanimous, which would have been great  6 for Highland and Jim.  7 Q. When you entered into the  8 agreements, did you intend that they would  9 be binding on Highland?  10 A. That was my belief, yes.  11 Q. Did it ever occur to you that you  12 might want to write down the terms of these  13 important agreements?  14 A. Honestly, it didn't come to mind,  15 no.  16 Q. Did you ever tell anybody in the  17 world prior to the petition date that you  18 had entered into these three agreements  19 with your brother?  20 A. Besides Melissa, who knew, I  21 don't remember anyone else offhand that I  22 would have discussed them with.  23 Q. How did Melissa know?  24 A. Pardon?  25 Q. Are you referring to Melissa</p>	Page 218	Page 219
<p>1 N. Dondero  2 Q. Did you tell her which notes were  3 the subject of the agreements?  4 A. The conversation was not that  5 detailed.  6 Q. Well, if she didn't ask any  7 questions and she didn't say anything that  8 you recall in response, can you recall  9 everything you said to Ms. Schroth during  10 this conversation?  11 A. I don't remember, John, the  12 specifics.  13 Q. Do you remember anything about  14 the conversation at all?  15 A. I just remember them coming up in  16 conversation.  17 Q. You remember what coming up?  18 A. The forgiveness of the loan.  19 Q. Did she indicate to you that she  20 knew about it already?  21 A. I don't remember.  22 Q. Did she express any surprise at  23 what you told her?  24 A. No, but I do remember her saying  25 it was the great motivator.</p>	Page 220	Page 221

<p>1 N. Dondero</p> <p>2 Q. But how does it motivate him when</p> <p>3 he can recover the benefits of the</p> <p>4 agreement regardless of how much above cost</p> <p>5 the asset is sold?</p> <p>6 A. Okay. I'm sorry, John, one more</p> <p>7 time, please, the question?</p> <p>8 Q. How does it motivate him when he</p> <p>9 will reap the benefits of the agreement if</p> <p>10 he sells -- withdrawn.</p> <p>11 How does he get motivated under</p> <p>12 an agreement whereby he will get the</p> <p>13 benefit of the forgiveness of over \$60</p> <p>14 million of notes without regard to how much</p> <p>15 above cost he sells one of three assets?</p> <p>16 A. Okay. John, when I entered into</p> <p>17 these, he was still at the helm of</p> <p>18 Highland.</p> <p>19 Q. Correct.</p> <p>20 A. So if he would have monetized</p> <p>21 them at a really high value, he would have</p> <p>22 benefitted from his interest, beneficial</p> <p>23 interest in Highland.</p> <p>24 Q. Under the terms of the agreement,</p> <p>25 are you able to identify how Mr. Dondero</p>	Page 222	<p>1 N. Dondero</p> <p>2 would have been motivated whether --</p> <p>3 withdrawn.</p> <p>4 It doesn't matter under the</p> <p>5 agreements that you entered into on behalf</p> <p>6 of Dugaboy how much above cost the assets</p> <p>7 are sold before Mr. Dondero could reap the</p> <p>8 benefits of the agreement, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you could have, but you</p> <p>11 didn't, demand that the notes would be</p> <p>12 forgiven only if he sold the assets at --</p> <p>13 I'm just going to pick a number -- 50</p> <p>14 percent more than cost, right?</p> <p>15 A. Anything is possible.</p> <p>16 Q. But you didn't -- anything is</p> <p>17 possible, but the fact is that neither you</p> <p>18 nor Dugaboy made any proposal that would</p> <p>19 tie the benefits that Mr. Dondero wanted to</p> <p>20 the amount of gain that was to be recovered</p> <p>21 on behalf of Highland, correct?</p> <p>22 A. Correct. I didn't look at it the</p> <p>23 way you are, correct.</p> <p>24 Q. And so when you speak of</p> <p>25 motivation under the terms of the agreement</p>	Page 223
<p>1 N. Dondero</p> <p>2 that you entered into on behalf of</p> <p>3 Highland, Mr. Dondero would be indifferent</p> <p>4 whether the asset was sold at 1 percent</p> <p>5 above cost, at 10 percent above cost, more</p> <p>6 than the face amount of the promissory</p> <p>7 note, right? There's no relationship</p> <p>8 between the gain to Highland and the</p> <p>9 benefit to Mr. Dondero, correct?</p> <p>10 A. You mean now when he's not at the</p> <p>11 helm of Highland, John?</p> <p>12 Q. No, I mean -- no. Let me try</p> <p>13 again.</p> <p>14 At the moment you entered into</p> <p>15 the agreement --</p> <p>16 A. Right.</p> <p>17 Q. -- if a subsequent event</p> <p>18 occurred, you and your brother knew that he</p> <p>19 would receive more than \$6 million in value</p> <p>20 through the forgiveness of the notes,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. But at the time that you entered</p> <p>24 into the agreements, neither you nor your</p> <p>25 brother knew what the economic benefit to</p>	Page 224	<p>1 N. Dondero</p> <p>2 Highland would be because the asset hadn't</p> <p>3 been sold yet, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And it wasn't in the hands of a</p> <p>6 third party, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And I think you may have</p> <p>9 testified to this earlier. If you did, I</p> <p>10 apologize. But do you know the aggregate</p> <p>11 amount that's due under each of the notes</p> <p>12 that are subject to the agreements that you</p> <p>13 entered into on behalf of Dugaboy?</p> <p>14 A. As of today's value or --</p> <p>15 Q. Let's start with today's value.</p> <p>16 A. Okay. The amount owed I believe</p> <p>17 per the lawsuit for all of them is just</p> <p>18 north of 50 million.</p> <p>19 Q. And were you aware at the time</p> <p>20 you entered into the agreements, the</p> <p>21 aggregate principal amount that was still</p> <p>22 due on the notes that were subject to the</p> <p>23 agreement?</p> <p>24 A. When I entered into the three</p> <p>25 agreements?</p>	Page 225

<p>1 N. Dondero</p> <p>2 Q. Yes.</p> <p>3 A. The total for '17, '18, and '19</p> <p>4 combined was in the ballpark of 72 million,</p> <p>5 I believe.</p> <p>6 Q. And the difference between the</p> <p>7 principal amount that was due at the time</p> <p>8 that you entered into the agreements and</p> <p>9 the principal amount that's due today is</p> <p>10 the payments that were made in the</p> <p>11 intervening period.</p> <p>12 Do I have that right?</p> <p>13 A. I'm assuming payments and</p> <p>14 interest, sir, yes.</p> <p>15 Q. Okay. If the assets are sold</p> <p>16 now, what benefit will Highland receive</p> <p>17 relative to the forgiveness of the notes?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. The assets are now in the hands</p> <p>22 of a third party, right?</p> <p>23 A. Um-hmm. Correct.</p> <p>24 Q. Okay. And is it your</p> <p>25 understanding that if a third party sells</p>	Page 226	<p>1 N. Dondero</p> <p>2 the assets that irrespective of the price</p> <p>3 at which it sold, the moment it's sold, the</p> <p>4 notes will be forgiven?</p> <p>5 A. That is my understanding.</p> <p>6 Q. So that if a third party were to</p> <p>7 sell the asset – withdrawn.</p> <p>8 So at the time that you entered</p> <p>9 into the agreements on behalf of Dugaboy,</p> <p>10 neither you nor Dugaboy had any</p> <p>11 understanding of what Highland's economic</p> <p>12 recovery would be if a third party sold any</p> <p>13 of the portfolio companies, correct?</p> <p>14 A. I wouldn't have known the future.</p> <p>15 That is correct.</p> <p>16 Q. Did you and Dugaboy – withdrawn.</p> <p>17 Did you and Dugaboy believe at</p> <p>18 the time that you entered into the</p> <p>19 agreements that Highland received</p> <p>20 reasonably equivalent value in exchange for</p> <p>21 the agreements?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. John, I repeat, I thought at the</p> <p>25 time I entered into the agreement, there</p>	Page 227
<p>1 N. Dondero</p> <p>2 was a – that it was a good deal for both</p> <p>3 Jim and Highland, a win-win situation. I</p> <p>4 think we discussed this already.</p> <p>5 Q. Okay. But you didn't know the</p> <p>6 price at which Mr. Dondero would sell the</p> <p>7 asset that was subject to the condition</p> <p>8 subsequent, correct?</p> <p>9 A. John, correct, but I know my</p> <p>10 brother, and he's a financial guru, and I</p> <p>11 trusted in the fact that he would make them</p> <p>12 into something great.</p> <p>13 Q. Okay. But neither you nor</p> <p>14 Dugaboy could predict whether Highland</p> <p>15 would receive from the sale of the assets</p> <p>16 more or less than the principal and</p> <p>17 interest due under the notes, correct?</p> <p>18 A. You are correct; I could not</p> <p>19 predict what would happen.</p> <p>20 Q. Okay. Did Mr. Dondero express</p> <p>21 any reason to you why he thought the notes</p> <p>22 should be forgiven if the assets were sold</p> <p>23 by somebody other than himself?</p> <p>24 A. Okay. I'm sorry, John. Again?</p> <p>25 Q. Did Mr. Dondero give you any</p>	Page 228	<p>1 N. Dondero</p> <p>2 reason as to why he believed he was</p> <p>3 entitled to the forgiveness of the notes</p> <p>4 simply because the assets were sold by</p> <p>5 somebody other than himself?</p> <p>6 A. I believe we touched on this</p> <p>7 already, but I will repeat it.</p> <p>8 His concern was that he put the</p> <p>9 time and effort and energy into the three</p> <p>10 portfolio companies and then some element</p> <p>11 beyond his control could come in and sell</p> <p>12 them at a loss after he had done all the</p> <p>13 work. And if we didn't have that provision</p> <p>14 in, his notes wouldn't be forgiven.</p> <p>15 Q. Did you ask him why he was</p> <p>16 concerned that some element beyond his</p> <p>17 control were to intervene to prevent him</p> <p>18 from selling the assets?</p> <p>19 A. I did not.</p> <p>20 Q. Did you ask him why that was even</p> <p>21 a possibility at the time that you entered</p> <p>22 into these three agreements?</p> <p>23 A. I did not. But knowing my</p> <p>24 brother, he looks at all sides of every</p> <p>25 situation.</p>	Page 229

<p>1 N. Dondero</p> <p>2 Q. Okay. The notes that were issued</p> <p>3 by HCMS, HCRE, and NexPoint, can we refer</p> <p>4 to those for the next set of questions as</p> <p>5 the corporate notes?</p> <p>6 A. Okay.</p> <p>7 MS. DEITSCH-PEREZ: Can you read</p> <p>8 that back?</p> <p>9 MR. MORRIS: Sure.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Can we call the notes that were</p> <p>12 executed on behalf of HCMS, HCRE, and</p> <p>13 NexPoint as the corporate notes?</p> <p>14 MS. DEITSCH-PEREZ: You're</p> <p>15 including HCMFA in this?</p> <p>16 MR. MORRIS: No, I never said</p> <p>17 that.</p> <p>18 MS. DEITSCH-PEREZ: I thought you</p> <p>19 did. That's why I said -- I think you</p> <p>20 misspoke, but can you ask the question</p> <p>21 again.</p> <p>22 MR. MORRIS: I don't think so. I</p> <p>23 don't think so, but I'll say it for a</p> <p>24 third time.</p> <p>25 BY MR. MORRIS:</p>	Page 230	Page 231
<p>1 N. Dondero</p> <p>2 promissory notes in return, correct?</p> <p>3 A. Yes. That's my understanding.</p> <p>4 Q. And under the agreement that you</p> <p>5 entered into on behalf of Dugaboy, those</p> <p>6 corporate notes would be forgiven as</p> <p>7 compensation to your brother upon the</p> <p>8 condition -- upon the fulfillment of</p> <p>9 conditions subsequent, correct?</p> <p>10 A. That is correct.</p> <p>11 Q. So that the forgiveness of the</p> <p>12 corporate notes was, in your mind, the same</p> <p>13 thing as giving compensation to your</p> <p>14 brother, correct?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. They would be considered deferred</p> <p>18 compensation.</p> <p>19 Q. And they would be considered</p> <p>20 compensation to your brother, not</p> <p>21 compensation to the borrowers under each of</p> <p>22 the corporate notes, correct?</p> <p>23 A. That's how I understood it, yes.</p> <p>24 Q. Okay. So in your mind, when you</p> <p>25 entered into these agreements, it didn't</p>	Page 232	Page 233
<p>1 N. Dondero</p> <p>2 Q. Can we call the notes executed on</p> <p>3 behalf of HCMS, HCRE, and NexPoint as the</p> <p>4 corporate notes?</p> <p>5 MS. DEITSCH-PEREZ: Okay. Thank</p> <p>6 you. I think I was hearing S as F.</p> <p>7 Sorry.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Is that okay, Ms. Dondero?</p> <p>10 A. Yes, that's fine. Thank you.</p> <p>11 Q. Okay. And under the agreements,</p> <p>12 were the corporate notes to be forgiven as</p> <p>13 compensation to your brother or as</p> <p>14 compensation to the corporate obligors, the</p> <p>15 corporate borrowers?</p> <p>16 A. Deferred compensation for Jim.</p> <p>17 Q. So let me get this right.</p> <p>18 HCMS, HCRE, and NexPoint each</p> <p>19 borrow money from Highland and give</p> <p>20 Highland promissory notes in return.</p> <p>21 Do I have that right?</p> <p>22 A. I'm sorry, John. Just one more</p> <p>23 time, the question, please?</p> <p>24 Q. Each of HCMS, HCRE, and NexPoint</p> <p>25 borrowed money from Highland and gave</p>		

<p>1 N. Dondero  2 would be rendered in the future, correct?  3 MS. DEITSCH-PEREZ: Object to the  4 form.  5 BY MR. MORRIS:  6 Q. You can answer.  7 A. Well, in the future from what  8 date?  9 Q. From the date that the agreements  10 were entered into.  11 A. Correct. Yes. From the date,  12 yes.  13 Q. The agreement was that the notes  14 would be forgiven based on a condition  15 subsequent, right?  16 A. Yes. So a future date from when  17 we entered them, um-hmm.  18 Q. So something had to happen in the  19 future in order for your brother to get the  20 benefit of the bargain, right?  21 A. Correct.  22 Q. Because if it was compensation  23 for services rendered in the past, you just  24 give him the money, right?  25 A. So true.</p>	Page 234	Page 235
<p>1 N. Dondero  2 Q. And do you know who made the loan  3 and who received the loan or loans?  4 A. I believe Dugaboy was the  5 borrower. The loan with Highland, it was  6 in 2017. And if my memory serves me right,  7 it was 23, 24 million.  8 Again, going by memory, John,  9 because I really wasn't prepared for this  10 line of questioning, but I believe there is  11 an earlier loan between the two of them.  12 Q. And did you – I apologize. I  13 didn't mean to step on your words.  14 Are you finished?  15 A. Oh, no. I am. Thank you.  16 Q. Okay. Were you the trustee of  17 the Dugaboy Trust at the time the loans you  18 just described were obtained from Highland?  19 A. The one that I mentioned that I  20 remembered the – I believe it's close to  21 or around 24 million, in May of '17, I was  22 obviously. I became trustee in October of  23 '15.  24 The other one, I'm not positive  25 on, John, the date and the amount. I just</p>	Page 236	Page 237

<p>1 N. Dondero  2 in around 2017?  3 MS. DEITSCH-PEREZ: I'm going to  4 object. This is neither one of the  5 Dugaboy topics and it's beyond the --  6 it doesn't pertain to the four  7 adversary proceedings. So it's not  8 fair to ask the witness about things  9 she's not had the occasion to refresh  10 herself on.  11 MR. MORRIS: Okay.  12 MR. DRAPER: John, I let this go  13 on behalf of Dugaboy a little bit just  14 for background information, but now  15 we're sort of bordering on specifics of  16 a transaction that is --  17 MR. MORRIS: I am -- go ahead,  18 Douglas. I'm sorry.  19 MR. DRAPER: -- that is not in  20 dispute in this litigation. It is not  21 within your 30(b)(6) designation. And  22 so it's fundamentally unfair to put  23 this witness through a memory test for  24 no purpose whatsoever that servers  25 nothing to do with this litigation.</p>	Page 238	Page 239
<p>1 N. Dondero  2 batch of Dugaboy, correct?  3 MR. MORRIS: I thought I was  4 quite clear, but, yes, Douglas, that is  5 correct.  6 MR. DRAPER: Great. Thank you.  7 MR. MORRIS: Yep.  8 BY MR. MORRIS:  9 Q. Okay. So Ms. Dondero, do you  10 recall any conversations you ever had at  11 any time concerning the 23 or 24 million  12 dollars that Dugaboy borrowed from  13 Highland?  14 A. Not at this time.  15 Q. Okay. You mentioned that you  16 believed that the money was used for the  17 acquisition of real estate.  18 Do I have that right?  19 MS. DEITSCH-PEREZ: Object to the  20 form.  21 A. Yes.  22 Q. And was that for the acquisition  23 of Jim's house in Colorado?  24 A. I don't know.  25 Q. Do you know if your brother</p>	Page 240	Page 241

<p>1 N. Dondero  2 form.  3 A. At the time I entered into the  4 agreements, I don't know, John.  5 Q. So at the time you entered into  6 these three agreements, you don't recall  7 whether you knew that Dugaboy had obtained  8 a 23 to 24 million dollar loan from  9 Highland.  10 Do I have that right?  11 A. I don't know as I sit here now.  12 What I knew then, I don't remember.  13 Q. But you do remember the specific  14 identity of each promissory note that was  15 the subject of each of these three  16 agreements, correct?  17 A. When I refreshed my memory, sure.  18 Q. Do you know if Dugaboy ever  19 entered into any agreement on behalf of  20 Highland other than the three oral  21 agreements that you described today?  22 A. Dugaboy has entered into a lot of  23 agreements with Highland.  24 Q. All right. Let me restate the  25 question.</p>	<p>Page 242</p> <p>1 N. Dondero  2 Did Dugaboy ever, ever – ever,  3 ever. Let me try again.  4 Did Dugaboy ever enter into any  5 agreements pursuant to Section 3.10 of the  6 LP agreement other than the three  7 agreements that you've mentioned today?  8 A. Oh –  9 MS. DEITSCH-PEREZ: Were there  10 any before these, John? Before?  11 MR. MORRIS: I don't care if it's  12 before or after. So let me ask again.  13 BY MR. MORRIS:  14 Q. As the trustee of Dugaboy, are  15 you aware of any agreement Dugaboy has ever  16 entered into pursuant to Section 3.10 of  17 the LP agreement other than the three  18 agreements that you have described today?  19 A. Not that I'm aware of,  20 compensation.  21 Q. Can we put up your discovery  22 responses, which I think is document No. 25  23 in your pile.  24 MS. DEITSCH-PEREZ: The notebook.  25 MR. ELMS: 25.</p>
<p>1 N. Dondero  2 THE WITNESS: What is it?  3 MR. ELMS: Tab 25.  4 THE WITNESS: Tab 25. Okay.  5 (Document review.)  6 BY MR. MORRIS:  7 Q. Have you seen this document  8 before, ma'am?  9 A. Just one second. I'm getting  10 there.  11 Q. Sure. Take your time.  12 A. Okay.  13 (Document review.)  14 A. Yes. Yes, I believe I have.  15 Q. Can you turn to page 15?  16 (Witness complies.)  17 Q. Is that your signature?  18 A. It is.  19 Q. And did you review this document  20 before you signed it?  21 A. I did.  22 Q. Did you have an opportunity to  23 consult with counsel before you signed it?  24 A. I did.  25 Q. Did you in fact consult with</p>	<p>Page 244</p> <p>1 N. Dondero  2 counsel before signing it?  3 A. I did.  4 Q. And you reviewed this document in  5 connection with your preparation for  6 today's deposition, correct?  7 A. Correct.  8 Q. As you sit here now, do you know  9 of anything in the objections and responses  10 that is wrong or inaccurate?  11 (Document review.)  12 A. I don't see anything, John. I  13 don't believe so.  14 Q. As you sit here right now, do you  15 have any reason to amend these objections  16 and responses to make them more complete or  17 more precise?  18 A. Not at this time.  19 Q. Can you turn to page 9, please?  20 (Witness complies.)  21 Q. Do you see in request for  22 admissions No. 7 and 8, you were asked to  23 admit, and I'm going to summarize, that no  24 document was created prior to the  25 commencement of the adversary proceeding</p>

<p>1 N. Dondero  2 that reflects – let's just take them one  3 at a time. Let me withdraw that.  4 Looking at No. 7, do you see that  5 you denied having sufficient knowledge or  6 information to admit or deny the request?  7 A. Yes.  8 Q. Okay. Would you agree that as  9 you sit here right now, you are not aware  10 of any document that was created prior to  11 the commencement of the adversary  12 proceeding that reflects or memorializes  13 the terms of the agreement?  14 A. Yes.  15 Q. Okay. And turning to No. 8, do  16 you see for that one, you also responded by  17 saying you lack sufficient information to  18 admit or deny the request?  19 A. Yes, I do.  20 Q. Would you agree with me that it  21 would be fair to say that as you sit here  22 today, you are not aware of any document  23 that was created prior to the commencement  24 of the adversary proceeding concerning the  25 existence of the agreement?</p>	Page 246	<p>1 N. Dondero  2 A. That's correct; I'm not aware of  3 any.  4 Q. Okay. Can we go to Interrogatory  5 No. 5?  6 MS. DEITSCH-PEREZ: So page 12 to  7 13. No, no, where you were. We were  8 in Tab 25.  9 THE WITNESS: Tab 25. What page  10 now?  11 MR. ELMS: Page 13.  12 MS. DEITSCH-PEREZ: Page 13. The  13 number is on page 12, but then –  14 MR. ELMS: He's asking you at the  15 very top there.  16 THE WITNESS: Oh.  17 (Document review.)  18 BY MR. MORRIS:  19 Q. And do you see that Interrogatory  20 No. 5 asked you to identify every document  21 and communication you reviewed in  22 connection with your decision to enter into  23 the agreement?  24 A. Yes.  25 Q. Okay. And you said that you</p>	Page 247
<p>1 N. Dondero  2 either reviewed or discussed with your  3 brother the LP agreement and the Dugaboy  4 Trust documents.  5 Do you see that?  6 A. Yes.  7 Q. Do you have any recollection of  8 actually reviewing the LP agreement before  9 entering into any of the agreements that  10 you've described?  11 A. I don't recall.  12 Q. You may or you may not, but do  13 you have a recollection of discussing it  14 with your brother?  15 A. I don't recall, John.  16 Q. Do you recall reviewing Section  17 3.1 before you entered into any of the  18 three agreements?  19 A. I don't know when that review  20 took place.  21 Q. Do you recall whether the review  22 took place in connection with your entry on  23 behalf of Dugaboy into any of the three  24 agreements?  25 A. I don't know the time frame,</p>	Page 248	<p>1 N. Dondero  2 John.  3 Q. Did you confer with anybody –  4 withdrawn.  5 Did you or Dugaboy confer with  6 anybody other than your brother before you  7 caused Dugaboy to enter into the three  8 agreements?  9 A. No, not that I'm aware of.  10 Q. Did you or Dugaboy seek any legal  11 advice before entering into any of the  12 three agreements?  13 A. No.  14 Q. Do you have any recollection of  15 actually reviewing the Dugaboy Trust  16 documents before entering into any of the  17 three agreements?  18 A. I have reviewed the trust  19 documents, John. I don't know what time  20 frame.  21 Q. Okay. I appreciate that.  22 A. Sure.  23 Q. I'm sorry, did I cut you off?  24 A. Oh, no. I'm sorry. I was just  25 answering you. Thank you.</p>	Page 249

<p>1 N. Dondero</p> <p>2 Q. Okay. So take a look at</p> <p>3 Interrogatory No. 6 below.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And your response was, "Other</p> <p>7 than generally approving compensation,</p> <p>8 including the agreements at issue in this</p> <p>9 notes proceeding, none."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. What does "Other than generally</p> <p>13 approving compensation" refer to?</p> <p>14 A. Well, "Other than generally..."</p> <p>15 I'm assuming it means the</p> <p>16 forgiveness of the loan, "Other than</p> <p>17 generally approving compensation."</p> <p>18 Q. Okay. So let's look at the</p> <p>19 Interrogatory. This Interrogatory</p> <p>20 specifically says that "Other than the</p> <p>21 agreement" –</p> <p>22 A. Okay.</p> <p>23 Q. – "identify every agreement you</p> <p>24 ever entered into as a representative of a</p> <p>25 majority of Class A shareholders of</p>	Page 250	Page 251
<p>1 N. Dondero</p> <p>2 MR. MORRIS: Can we put up –</p> <p>3 withdrawn. Hold on.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Before we take this down, did</p> <p>6 Dugaboy provide – withdrawn.</p> <p>7 Did Dugaboy approve any</p> <p>8 compensation for Jim Dondero other than the</p> <p>9 three agreements that you've described</p> <p>10 today?</p> <p>11 A. I do not believe so since I've</p> <p>12 been trustee.</p> <p>13 MR. MORRIS: Can we put up</p> <p>14 Exhibit No. 26, please, which would</p> <p>15 have been Dugaboy's discovery</p> <p>16 responses?</p> <p>17 (N. Dondero Exhibit 26, Defendant</p> <p>18 the Dugaboy Investment Trust's</p> <p>19 Objections and Responses to Plaintiff's</p> <p>20 Request for Admission, Interrogatories,</p> <p>21 and Requests for Production, marked for</p> <p>22 identification, as of this date.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. And that was No. 26 in the</p> <p>25 binder.</p>	Page 252	Page 253

<p>1 N. Dondero</p> <p>2 A. I don't see anything that needs</p> <p>3 to be changed.</p> <p>4 Q. As you sit here right now, as the</p> <p>5 trustee of the Dugaboy Trust, do you have</p> <p>6 any reason to amend your objections or</p> <p>7 responses to make them more complete or</p> <p>8 more precise?</p> <p>9 A. I have no reason at this time,</p> <p>10 John.</p> <p>11 Q. Okay. I think I have kind of the</p> <p>12 same questions that I just asked you about</p> <p>13 your discovery responses, but let's see.</p> <p>14 Can we turn to page 8, which</p> <p>15 again has responses to request for</p> <p>16 admission No. 7 and 8?</p> <p>17 A. Okay.</p> <p>18 Q. And if you take a look request</p> <p>19 for admission No. 7 and the response, can</p> <p>20 you just read the that to yourself and tell</p> <p>21 me when you're finished?</p> <p>22 (Witness complies.)</p> <p>23 A. I'm done.</p> <p>24 Q. Okay. Would your response be</p> <p>25 accurate as follows: Dugaboy is not aware</p>	Page 254	<p>1 N. Dondero</p> <p>2 of any document that was created prior to</p> <p>3 the commencement of the adversary</p> <p>4 proceeding that reflects or memorializes</p> <p>5 the terms of the agreement?</p> <p>6 A. That is correct.</p> <p>7 Q. Okay. Moving to request for</p> <p>8 admission No. 8, the same thing, can you</p> <p>9 just read the request and the response to</p> <p>10 yourself and let me know when you're</p> <p>11 finished?</p> <p>12 (Witness complies.)</p> <p>13 A. I'm done, John.</p> <p>14 Q. Okay. Would it be fair to</p> <p>15 interpret your response as follows:</p> <p>16 Dugaboy is not aware of any document that</p> <p>17 was created prior to the commencement of</p> <p>18 the adversary proceeding concerning the</p> <p>19 existence of the agreement?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And let's go to</p> <p>22 Interrogatory No. 5.</p> <p>23 Are your answers in your capacity</p> <p>24 as – and if you want me to go through it</p> <p>25 again, I'm happy to do it, but I just need</p>	Page 255
<p>1 N. Dondero</p> <p>2 to know in the first instance, is there any</p> <p>3 difference – will your answers concerning</p> <p>4 Interrogatory No. 5 be any different in</p> <p>5 your capacity as the Dugaboy trustee than</p> <p>6 they were in your individual capacity?</p> <p>7 A. Let me read it, John.</p> <p>8 Q. Take your time.</p> <p>9 (Document review.)</p> <p>10 A. It's the same as the one earlier.</p> <p>11 Q. Okay. And finally, let's just</p> <p>12 look at Interrogatory No. 6. Please take a</p> <p>13 look at that and the response and let me</p> <p>14 know if your answers in your capacity as</p> <p>15 the trustee of the Dugaboy Trust would</p> <p>16 differ in any way from the answers that you</p> <p>17 gave pertaining to Interrogatory No. 6 in</p> <p>18 your individual capacity.</p> <p>19 A. No, it's the same.</p> <p>20 Q. Okay.</p> <p>21 MR. MORRIS: So the time right</p> <p>22 now is 4:57 Eastern, I guess 3:57 your</p> <p>23 time. I'm done with my outline, but I</p> <p>24 just want to check my notes to see if I</p> <p>25 have anything left.</p>	Page 256	<p>1 N. Dondero</p> <p>2 Douglas, you'll be happy to know</p> <p>3 that I do expect to finish well in</p> <p>4 advance of 4:30 Central time. So why</p> <p>5 don't we just take a break and we'll</p> <p>6 come back at, I guess, 4:10 Central</p> <p>7 time?</p> <p>8 THE WITNESS: Okay.</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 3:57. We are going off the record.</p> <p>11 (Recess is taken.)</p> <p>12 THE VIDEOGRAPHER: The time is</p> <p>13 12:15. We are back on the record.</p> <p>14 MR. MORRIS: This is John Morris.</p> <p>15 I have no further questions of this</p> <p>16 witness at this time.</p> <p>17 Does anybody else have any</p> <p>18 questions?</p> <p>19 MS. DEITSCH-PEREZ: Reserve for</p> <p>20 trial.</p> <p>21 MR. MORRIS: So are we in</p> <p>22 agreement that we can close the record</p> <p>23 right now?</p> <p>24 MR. DRAPER: Yes.</p> <p>25 MR. MORRIS: Thank you very much</p>	Page 257

1	N. Dondero	Page 258	1	C E R T I F I C A T E	Page 259
2	everybody. Ms. Dondero, thank you.		2		
3	THE VIDEOGRAPHER: The time is		3		
4	4:16. This concludes today's		4	STATE OF FLORIDA )	
5	deposition, Monday, October 18, 2021.		5	: ss.	
6	(Time noted: 4:16 p.m.)		6	COUNTY OF PALM BEACH )	
7			7		
8			8	I, ANNETTE ARLEQUIN, a Notary	
9	NANCY DONDERO		9	Public within and for the State of New	
10			10	York, do hereby certify:	
11			11	That NANCY DONDERO, whose	
12	Subscribed and sworn to before me		12	deposition is hereinbefore set forth,	
13	this day of 2021.		13	was duly sworn by me, and that the	
14			14	transcript of such depositions is a	
15			15	true record of the testimony given by	
16			16	such witness.	
17			17	I further certify that I am not	
18			18	related to any of the parties to this	
19			19	action by blood or marriage; and that I	
20			20	am in no way interested in the outcome	
21			21	of this matter.	
22			22	IN WITNESS WHEREOF, I have hereunto	
23			23	set my hand this 18th day of October, 2021.	
24			24		
25			25	ANNETTE ARLEQUIN, CCR, RPR, CRR, RSA	
		Page 260			Page 261
1	I N D E X		1		
2			2	ERRATA SHEET FOR THE TRANSCRIPT OF:	
3			3	CASE NAME: IN RE: HIGHLAND CAPITAL MANAGEMENT	
4	WITNESS	PAGE	4	DATE: OCTOBER 18, 2021	
5			5	DEPONENT: NANCY DONDERO	
6	NANCY DONDERO		6	Pg. Ln. Now Reads Should Read Reason	
7	BY MR. MORRIS	8	7	— — — — —	
8			8	— — — — —	
9			9	— — — — —	
10	I N D E X O F E X H I B I T S		10	— — — — —	
11	DESCRIPTION	PAGE	11	— — — — —	
12			12	— — — — —	
13	N. Dondero Exhibit 2, Amended	148	13	— — — — —	
14	Complaint for (1) Breach of		14	— — — — —	
15	Contract, (II) Turnover of		15	— — — — —	
16	Property, (III) Fraudulent		16	— — — — —	
17	Transfer, and (IV) Breach of		17		
18	Fiduciary Duty		18		
19	N. Dondero Exhibit 31, Defendant	157	19	NANCY DONDERO	
20	James Dondero's Answer to Amended		20	S U B S C R I B E D A N D S W O R N B E F O R E M E	
21	Complaint		21	T H I S _ _ _ D A Y O F _ _ _ 2021.	
22	N. Dondero Exhibit 43, Promissory	184	22		
23	Note, Bates-stamped D-CNL000550		23		
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## **EXHIBIT 101**

1  
2       IN THE UNITED STATES BANKRUPTCY COURT  
3           FOR THE NORTHERN DISTRICT OF TEXAS  
4               DALLAS DIVISION  
5               Case No. 2021-1193

6 -----x  
7 In Re: Chapter 11  
8 HIGHLAND CAPITAL MANAGEMENT, L.P. Case No.  
9 Debtor, 19-34054-sqj11

10 -----x  
11 HIGHLAND CAPITAL MANAGEMENT, L.P.,  
12 Plaintiff, Adversary  
13 -vs- Proceeding No.

14 NEXPOINT ADVISORS, L.P., JAMES 21-03005-sgj11

15 DONDERO, NANCY DONDERO, and the  
16 DUGABOY INVESTMENT TRUST,  
17 Defendants.

18 -----x  
19 REMOTE VIDEOTAPED DEPOSITION OF ALAN JOHNSON  
20 Tuesday, November 2, 2021

22 Reported by:  
23 Amy A. Rivera, CSR, RPR, CLR  
24 JOB NO. 202068  
25

	Page 2	Page 3
1		1
2	November 2, 2021	2 REMOTE APPEARANCES:
3	9:02 a.m.	3 PACHULSKI STANG ZIEHL & JONES
4		4 Attorneys for Highland Capital Management, L.P.
5	REMOTE videotaped deposition of ALAN	5 780 Third Avenue
6	JOHNSON held pursuant to Notice, before Amy A.	6 New York, NY 10017
7	Rivera, Certified Shorthand Reporter, Registered	7 BY: JOHN MORRIS, ESQ.
8	Professional Reporter, Certified LiveNote Reporter,	8 HAYLEY WINOGRAD, ESQ.
9	and a Notary Public of the States of New York, New	9
10	Jersey and Delaware.	10 STINSON
11		11 Attorneys for James Dondero, HCRE, HCMS
12		12 3102 Oak Lawn Avenue
13		13 Dallas, TX 75219
14		14 BY: MICHAEL AIGEN, ESQ.
15		15 DEBORAH DEITSCH-PEREZ, ESQ.
16		16
17		17 GREENBERG TRAURIG
18		18 Attorneys for Nancy Dondero
19		19 2200 Ross Avenue
20		20 Dallas, TX 75201
21		21 BY: DANIEL ELMS, ESQ.
22		22
23		23
24		24
25		25
	Page 4	Page 5
1		1 ALAN JOHNSON
2	ALSO PRESENT:	2 COURT REPORTER: Good morning,
3	Michael Landis	3 Counsel.
4	Deborah Newman	4 My name is Amy Rivera. I am a
5	Michael Pernicaro	5 certified court reporter in association with
6	La Asia Carty	6 TSG Reporting, Inc.
7		7 Due to the severity of the COVID-19
8		8 and following the practice of social
9		9 distancing, I will not be in the same room
10		10 with the witness but will record this
11		11 deposition remotely and will swear the
12		12 witness remotely.
13		13 Do all parties stipulate to the
14		14 validity of the remote recording and remote
15		15 swearing and that it will be admissible in
16		16 the courtroom as if it had been taken
17		17 following Rule 30 and other rules of the
18		18 Federal Rules of Civil Procedures and the
19		19 state's rules where this case is pending?
20		20 MR. MORRIS: John Morris, Pachulski
21		21 Stang Ziehl & Jones, for Highland Capital
22		22 Management, L.P.
23		23 We stipulate.
24		24 MR. AIGEN: Michael Aigen from
25		25 Stinson.

<p>1           ALAN JOHNSON  2           And I'm here with Deborah  3           Deitsch-Perez.  4           And we also stipulate.  5           MR. ELMS: Daniel Elms, Greenberg  6           Traurig, on behalf of Nancy Dondero.  7           We stipulate.  8   ALAN JOHNSON, having been duly sworn  9   by the Notary Public, testified as follows:  10          MR. MORRIS: Thank you.  11   EXAMINATION  12          Q. Good morning, Mr. Johnson.  13          Can you hear me?  14          A. Yes, you're very clear.  15          Q. Okay.  16          My name is John Morris. I'm an  17   attorney at Pachulski Stang Ziehl &amp; Jones, and we  18   represent Highland Capital Management.  19          We're here today for your deposition.  20          Do you understand that?  21          A. Yes.  22          Q. And do I understand correctly that  23   you've been engaged to provide expert testimony in  24   this matter?  25          A. Yes.</p>	Page 6	<p>1           ALAN JOHNSON  2          Q. Do you have a general understanding of  3   the nature of the litigation in which your expert  4   testimony is being offered?  5          A. At a high level, I do, yes.  6          Q. Can you tell me what your general  7   understanding at a high level is in the pending  8   litigation?  9          A. The litigation involves loans for  10   Mr. Dondero that were taken out during – over a  11   period of years.  12          Late in 2018 and '19, the loans were  13   consolidated and modified to put in place  14   acceleration features, if – if the specific  15   transactions occurred, so that at least – there's  16   a lot of litigation, but as I understand what I'm  17   involved is these loans that accumulated over a  18   period of years, the practices of loans, and I'm  19   also opining on his market compensation over the  20   period 2013 through 2019.  21          Q. Do you know who the obligors are under  22   the loans you've just mentioned?  23          A. Obligors? Could you explain – give  24   me more detail what you're looking for?  25          Q. Sure.</p>	Page 7
<p>1           ALAN JOHNSON  2          Do you know who own – who the loan  3   was made to – withdrawn.  4          Do you know who the loan – I think  5   you used the word, plural, "loans," so let me ask,  6   using your word, if I have that correctly, do you  7   know who Highland made the loans to that are the  8   subject of the litigation?  9          A. I'm not clear, no.  10         Q. Okay.  11         You don't have an understanding as you  12   sit here today as to who the loans Highland made  13   to that are the subject of the litigation.  14         Do I have that right?  15         A. If I understand it, the loans  16   criss-crossed differently to different entities,  17   so I'm not exactly sure how all that was  18   structured.  19         Q. Okay.  20         You've been deposed before, right?  21         A. Yes.  22         Q. Okay.  23         And you've served as an expert before,  24   right?  25         A. Yes.</p>	Page 8	<p>1           ALAN JOHNSON  2          Q. In fact, you've been retained by my  3   firm to provide expert services in the area of  4   executive compensation. Is that right?  5          A. Yes. Yes, I have.  6          MR. MORRIS: Mr. Komfeld sends his  7   best regards.  8          THE WITNESS: Thank you.  9          MR. MORRIS: You bet.  10         Q. So I don't know if you've given remote  11   depositions before, but just very, very  12   preliminarily, since you are an experienced  13   witness, we'll be looking at a number of documents  14   today, and if I put something up on the screen and  15   you believe that you need to see more of the  16   document, will you let me know that?  17         A. Sure.  18         Q. Where are you sitting right now?  19         A. My home in New Jersey.  20         Q. Okay.  21         Do you have any documents in front of  22   you right now?  23         A. No.  24         Q. Do you have a telephone?  25         A. Yes, I do.</p>	Page 9

<p>1           ALAN JOHNSON</p> <p>2   Q.  Is it on right now?</p> <p>3   A.  Yes.  It is my cell phone.</p> <p>4   Q.  Could I trouble you to just turn it</p> <p>5   off?</p> <p>6        You know what, if you're not</p> <p>7   comfortable for personal reasons, could I ask you</p> <p>8   not to look at your phone unless it rings and it's</p> <p>9   your child or spouse?</p> <p>10   A.  Let me put it out of arm's reach and</p> <p>11  put it upside down, how's that?</p> <p>12   Q.  That's fair.  That's fair.</p> <p>13   I've taken a look at your report that</p> <p>14  you prepared back in May.  Based on that report,</p> <p>15  do I have it correct that you've spent your entire</p> <p>16  career as an executive compensation consultant?</p> <p>17   A.  Yes, that is correct.</p> <p>18   Q.  And you've had your own executive</p> <p>19  compensation consulting firm since the early '90s.</p> <p>20  Is that right?</p> <p>21   A.  Yes.</p> <p>22   Q.  And your firm specializes in</p> <p>23  compensation consulting for the financial services</p> <p>24  industry, correct?</p> <p>25   A.  Yes.</p>	Page 10	Page 11
<p>1           ALAN JOHNSON</p> <p>2   A.  Probably more than 50.</p> <p>3   Q.  Have you ever been retained by a</p> <p>4  compensation committee of a board of directors to</p> <p>5  provide advice?</p> <p>6   A.  Yes.</p> <p>7   Q.  And if I separate that from boards of</p> <p>8  directors generally, is that also a number that</p> <p>9  measures in the dozens?</p> <p>10   A.  At least.</p> <p>11   Q.  Other than boards of directors and</p> <p>12  compensation committees of boards of directors,</p> <p>13  can you identify generally any other decision</p> <p>14  makers that you've been retained by to give advice</p> <p>15  on areas of executive compensation?</p> <p>16   A.  We – we get involved from time to</p> <p>17  time with business owners.  That might be a</p> <p>18  private equity firm or hedge fund looking at their</p> <p>19  portfolio companies.</p> <p>20   We also do a lot of project work.  So</p> <p>21  that would involve working with senior leaders of</p> <p>22  different financial services firms to look at</p> <p>23  either their whole compensation program or the</p> <p>24  programs for particular units.</p> <p>25   We also from time to time get involved</p>	Page 12	Page 13
<p>1           ALAN JOHNSON</p> <p>2  with some of the major consulting firms where</p> <p>3  they – we provide advice to them as they work</p> <p>4  with their clients on financial services</p> <p>5  compensation.</p> <p>6   Q.  Okay.</p> <p>7        And what is it that you sell?  Can you</p> <p>8  describe for me, if you were giving a sales pitch,</p> <p>9  why a board or a compensation committee should</p> <p>10  hire you?</p> <p>11   A.  Well, we have a lot of experience in</p> <p>12  the space across financial services.  So we have a</p> <p>13  large home-field advantage of knowledge,</p> <p>14  experiences.  We know the nuances of what goes on</p> <p>15  in the industry.  That's part of the sales pitch.</p> <p>16   We also are good consultants.  We –</p> <p>17  we listen.  We are experts at looking at</p> <p>18  information and data and all that.</p> <p>19   And at the end of the sales pitch, I</p> <p>20  usually say, We also have big scans, so we're used</p> <p>21  to dealing with difficult people.</p> <p>22   So many of the people in financial</p> <p>23  services are opinionated and, at times, difficult,</p> <p>24  so a lot of experience across cycles.  We're</p> <p>25  comfortable giving clients difficult news, and</p>		

<p>1           ALAN JOHNSON</p> <p>2 we're good at what we do.</p> <p>3   Q. And is it fair to say you have</p> <p>4 expertise in the area of executive compensation?</p> <p>5   A. Absolutely.</p> <p>6   Q. And is it fair to say that part of</p> <p>7 that expertise is knowing the marketplace?</p> <p>8   A. Absolutely.</p> <p>9   Q. And is part of that expertise knowing</p> <p>10 or being familiar with the current trends in the</p> <p>11 marketplace?</p> <p>12   A. Yes, absolutely.</p> <p>13   Q. And would you say that you have a</p> <p>14 really good understanding of how to structure</p> <p>15 compensation plans that are appropriate to the</p> <p>16 clients that you serve?</p> <p>17   A. Yes.</p> <p>18   Q. And one of the things that we're here</p> <p>19 to discuss today is the concept of forgivable</p> <p>20 loans.</p> <p>21   Do you understand that?</p> <p>22   A. Yes.</p> <p>23   Q. And your client is James Dondero.</p> <p>24   Do I have that right?</p> <p>25   A. I was retained by Stinson, but they</p>	Page 14	Page 15
<p>1           ALAN JOHNSON</p> <p>2 agreement?</p> <p>3   A. When I discussed it with Mr. Dondero,</p> <p>4 I believed there was a single agreement, but that</p> <p>5 I'm not sure of. I think that's the – what I got</p> <p>6 out of him.</p> <p>7   Q. Okay.</p> <p>8   You haven't been informed that more</p> <p>9 than one agreement exists.</p> <p>10   Do I have that right?</p> <p>11   A. I don't believe so.</p> <p>12   Q. Okay.</p> <p>13   Do you know how many loans are the</p> <p>14 subject of the agreement?</p> <p>15   A. There were – they were consolidated,</p> <p>16 I believe, in late '18 or '19. Originally, there</p> <p>17 were a lot more. I think they're down to a</p> <p>18 couple, if I recall.</p> <p>19   Q. Is it relevant to your analysis to</p> <p>20 know the number of loans that are the subject of</p> <p>21 the agreement?</p> <p>22   A. I don't think so.</p> <p>23   Q. Do you know the aggregate value of the</p> <p>24 loans that are the subject of the agreement that</p> <p>25 you referred to in your report?</p>	Page 16	Page 17

<p>1           ALAN JOHNSON</p> <p>2 interest rates and so forth.</p> <p>3   Q. When did you see that documentation?</p> <p>4   A. In the last week or so, prior to this</p> <p>5 deposition.</p> <p>6   Q. Have you amended your report?</p> <p>7   A. I have not.</p> <p>8   Q. So are any of the conclusions altered</p> <p>9 at all by any of the documents you've seen</p> <p>10 recently?</p> <p>11   A. No.</p> <p>12   Q. And now that I am aware that you've</p> <p>13 seen certain loan documentation, I'll ask you</p> <p>14 again if you can identify any obligor under any of</p> <p>15 the loans other than Mr. Dondero?</p> <p>16   A. I'm sorry. I just didn't pay that</p> <p>17 much attention. I was looking – I don't</p> <p>18 remember.</p> <p>19   Q. Do you recall if the loans were demand</p> <p>20 loans or term loans?</p> <p>21   A. The ones I recall were – they were</p> <p>22 for a very long period of time, I think 30 years.</p> <p>23 They were – they were 30-year term loan.</p> <p>24   Q. And do you recall how many 30-year</p> <p>25 term loans you saw?</p>	Page 18	Page 19
<p>1           ALAN JOHNSON</p> <p>2   A. I have not.</p> <p>3   Q. Have you seen any documents that</p> <p>4 describe the existence or terms of any forgiveness</p> <p>5 agreement between Highland and any person or</p> <p>6 entity in the world?</p> <p>7   A. I have not.</p> <p>8   Q. So is it fair to say that you have not</p> <p>9 seen any documentary evidence of any loan</p> <p>10 forgiveness agreement between Highland and anybody</p> <p>11 in the world?</p> <p>12   A. I have not seen any documents, that's</p> <p>13 right.</p> <p>14   Q. Okay.</p> <p>15       The agreement that Mr. Dondero</p> <p>16 described for you, do you understand that that is</p> <p>17 an oral agreement?</p> <p>18   A. I don't think he said to me it was an</p> <p>19 oral agreement. He described it to me. I</p> <p>20 don't – I don't think he – I don't remember if</p> <p>21 he characterized it as an oral agreement, but he</p> <p>22 described how – he described how – in his</p> <p>23 opinion, how the agreement worked.</p> <p>24       I don't – I don't recall if he</p> <p>25 mentioned it was just verbal or it was written. I</p>	Page 20	Page 21

<p>1           ALAN JOHNSON</p> <p>2 the forgiveness of any loans that Highland</p> <p>3 extended to Mr. Dondero or his affiliates, are</p> <p>4 you?</p> <p>5       A. I am not.</p> <p>6       Q. You're not offering any opinion as to</p> <p>7 the terms of any alleged agreement between</p> <p>8 Mr. Dondero and Highland concerning the</p> <p>9 forgiveness of loans, are you?</p> <p>10      A. I am not.</p> <p>11      Q. You're not offering any opinions on</p> <p>12 the reasonableness of any of the terms of any</p> <p>13 alleged agreement between Mr. Dondero and Highland</p> <p>14 concerning the forgiveness of loans, are you?</p> <p>15      A. I am not.</p> <p>16      Q. You've been informed that this</p> <p>17 modification was intended to provide Mr. Dondero</p> <p>18 with additional compensation based on the</p> <p>19 satisfaction of what we've been calling "certain</p> <p>20 conditions subsequent." Is that fair?</p> <p>21      A. As I understood it, the loans</p> <p>22 existed – I don't know. I don't know if that's a</p> <p>23 fair characterization.</p> <p>24       I think the loans were modified –</p> <p>25 that, I'd have to really think about, because the</p>	Page 22	Page 23
<p>1           ALAN JOHNSON</p> <p>2 transactions occur.</p> <p>3       Q. Okay. So it was supposed to – your</p> <p>4 understanding from Mr. Dondero was that the</p> <p>5 agreement was intended to reward him if he</p> <p>6 achieved some level of performance in the future.</p> <p>7       Do I have that right?</p> <p>8       A. Yes.</p> <p>9       Q. Okay.</p> <p>10      Do you know what the purpose of any of</p> <p>11 the loans that are the subject of the forgiveness</p> <p>12 agreement was?</p> <p>13      A. Mr. Dondero described the – the loans</p> <p>14 as a way to invest in the business rather than</p> <p>15 paying out compensation. He described it, I</p> <p>16 think, as delayed gratification, that these funds</p> <p>17 then would be invested in the business rather than</p> <p>18 being paid out to him as – as current</p> <p>19 compensation.</p> <p>20      Q. Do you know what the – what the</p> <p>21 obligors under the various loans did with the</p> <p>22 proceeds that they received from Highland?</p> <p>23      A. Mr. Dondero described it as the</p> <p>24 proceeds would be reinvested in the business.</p> <p>25      Q. Do you have any source of information</p>	Page 24	Page 25

<p>1           ALAN JOHNSON</p> <p>2   Q. Did they tell you anything concerning</p> <p>3 the intent of the loans other than what you've</p> <p>4 just described?</p> <p>5   A. They described their individual</p> <p>6 circumstances around why the loans were made to</p> <p>7 them and the circumstances, but the intent of the</p> <p>8 loan itself, no. It just – some comments from</p> <p>9 them and Mr. Dondero.</p> <p>10   Q. Okay. I apologize, I probably wasn't</p> <p>11 clear here. I am only talking about the loans</p> <p>12 that are the subject of the forgiveness agreement</p> <p>13 that's – that's part of the lawsuit. I'm not</p> <p>14 talking about any loans to any prior employees.</p> <p>15   So I think – I think we may have been</p> <p>16 talking past each other, so let me try again.</p> <p>17   With respect to the purpose of each of</p> <p>18 the loans that are the subject of the pending</p> <p>19 lawsuit, do you have any source of information</p> <p>20 regarding their purpose other than Mr. Dondero?</p> <p>21   A. I do not.</p> <p>22   Q. Okay.</p> <p>23   Do you have any source of information</p> <p>24 other than Mr. Dondero concerning what the</p> <p>25 obligors of each of the loans that's subject to</p>	Page 26	Page 27
<p>1           ALAN JOHNSON</p> <p>2   Q. Well, if the assets subject to the</p> <p>3 agreement are not sold above cost, Mr. Dondero</p> <p>4 will never get any gratification. Is that</p> <p>5 correct?</p> <p>6   A. Yes.</p> <p>7   MR. AIGEN: Objection, form.</p> <p>8   Q. I think you said that you have</p> <p>9 experience giving advice concerning forgivable</p> <p>10 loans.</p> <p>11   Do I have that right?</p> <p>12   A. Yes.</p> <p>13   Q. And have you ever given advice on how</p> <p>14 to structure forgivable loans as part of executive</p> <p>15 compensation?</p> <p>16   A. Yes.</p> <p>17   Q. Can you please describe your</p> <p>18 experience in that area?</p> <p>19   A. From time to time, clients or we come</p> <p>20 up with using loans as a vehicle to incent and</p> <p>21 motivate executives and senior professionals. So</p> <p>22 we'll get involved in the magnitude of the loans,</p> <p>23 the terms, interest rates, you know, if there's</p> <p>24 performance attached to it, what the performance</p> <p>25 would be defined as.</p>	Page 28	Page 29

<p>1           ALAN JOHNSON</p> <p>2 employees, I'm going to use the phrase "decision</p> <p>3 maker" to refer to that person or body who is</p> <p>4 making the decision on behalf of the employer to</p> <p>5 forgive a loan as part of executive compensation.</p> <p>6 Is that fair?</p> <p>7       A. Sure. Okay.</p> <p>8       Q. Okay.</p> <p>9       And you've given advice to decision</p> <p>10 makers using the definition that I've just</p> <p>11 described, correct?</p> <p>12      A. Yes.</p> <p>13      Q. Okay.</p> <p>14       When you give advice to decision</p> <p>15 makers who are considering whether to forgive</p> <p>16 loans as part of executive compensation, do you</p> <p>17 advise them to obtain any information before</p> <p>18 making that decision?</p> <p>19      A. You want them to be informed. Maybe</p> <p>20 they already have adequate information about</p> <p>21 circumstances, but you would certainly want them</p> <p>22 to be informed before they made a – certainly, a</p> <p>23 final decision.</p> <p>24      Q. And if you were giving expert advice</p> <p>25 to a decision maker, what areas would you tell</p>	Page 30	<p>1           ALAN JOHNSON</p> <p>2 them that they ought to be informed on before they</p> <p>3 enter into a forgiveness?</p> <p>4       A. Make sure I understand the question,</p> <p>5 you're talking about before they do the agreement</p> <p>6 itself, not the forgiveness of it but structuring</p> <p>7 the agreement?</p> <p>8       Q. No. I apologize. I'm not talking</p> <p>9 about the underlying loan. I'm talking about the</p> <p>10 decision to enter into an agreement pursuant to</p> <p>11 which, you know, loans would be forgiven, what</p> <p>12 information should they have before they're –</p> <p>13 that kind of an agreement?</p> <p>14      A. Fair enough.</p> <p>15       They should understand the – the</p> <p>16 magnitude of the accomplishment that would be</p> <p>17 attached to the – to the loans.</p> <p>18       They should have a basic understanding</p> <p>19 of the magnitude of the loans, the magnitude of</p> <p>20 the events that they're incenting or rewarding, if</p> <p>21 it is – is there some proportionality between the</p> <p>22 success and the amount of loan forgiveness?</p> <p>23       They should have some idea of the</p> <p>24 probability of these accomplishments happening.</p> <p>25 Is it highly unlikely or very likely to happen?</p>	Page 31
<p>1           ALAN JOHNSON</p> <p>2       So I think they should have some</p> <p>3 understanding of the proportionality. They should</p> <p>4 have some understanding of difficulty. And is it</p> <p>5 a – is it fair to forgive these loan if these</p> <p>6 events occur?</p> <p>7       Q. Let's talk about some information.</p> <p>8       In your opinion, should the decision</p> <p>9 maker be knowledgeable about the executive's</p> <p>10 compensation history before entering into an</p> <p>11 agreement concerning the forgiveness of any loans?</p> <p>12      A. The decision maker should have a</p> <p>13 general understanding of the pay history of the</p> <p>14 individual, the context of the company, the</p> <p>15 situation. It should – it would be one of the</p> <p>16 factors that you should – you should certainly be</p> <p>17 aware of.</p> <p>18      Q. And why do you believe that a decision</p> <p>19 maker should be knowledgeable about the</p> <p>20 executive's pay history before she, he or it</p> <p>21 agrees to forgive loans?</p> <p>22      A. I think in the real world, you want to</p> <p>23 understand the context. Has this executive been</p> <p>24 very well paid or poorly paid in the past? What</p> <p>25 is that individual's perspective on his or she's</p>	Page 32	<p>1           ALAN JOHNSON</p> <p>2 pay history? I think that's relevant.</p> <p>3       You know, is the forgiveness of the</p> <p>4 loan significant enough to motivate the behaviors</p> <p>5 that you're trying to do? If that individual –</p> <p>6 if this is a trivial amount, then it won't have</p> <p>7 much of an impact. If it's overwhelming, maybe it</p> <p>8 will lead to behaviors that are not good, take too</p> <p>9 much risk or whatever.</p> <p>10       So, yes, you should be aware of the</p> <p>11 pay history, but also, the business context, how</p> <p>12 important is it for these events to happen. Is</p> <p>13 this – is this very significant in the company's</p> <p>14 future?</p> <p>15       So yes, you should be aware.</p> <p>16      Q. Can you think of any circumstances</p> <p>17 where it would be appropriate for a decision maker</p> <p>18 to agree to forgive loans as part of an</p> <p>19 executive's compensation without having an</p> <p>20 understanding of the executive's compensation</p> <p>21 history?</p> <p>22      A. Well, you – sometimes, you have new</p> <p>23 executives, so you wouldn't – you wouldn't have</p> <p>24 any pay history to be aware of. And some – many</p> <p>25 of our clients, the pay history is somewhat murky</p>	Page 33

<p>1           ALAN JOHNSON</p> <p>2 or complicated, so it would not be ideal, but it</p> <p>3 certainly has happened.</p> <p>4     Q. So – so it happens, you think – the</p> <p>5 circumstances you can think of are for new</p> <p>6 employees or for people with murky compensation</p> <p>7 histories.</p> <p>8     Do I have that right?</p> <p>9     A. I think that would usually be the</p> <p>10 circumstances where you would at least have some</p> <p>11 good, general understanding of somebody's pay</p> <p>12 history.</p> <p>13    Q. Would you recommend that the decision</p> <p>14 maker seek information concerning the executive's</p> <p>15 compensation history before agreeing to forgive</p> <p>16 any loans?</p> <p>17    A. I – generally, advice, I would want</p> <p>18 to know that. So yes, I would suggest they find</p> <p>19 that out, if it's feasible or – but yes, that</p> <p>20 would be one of the things I would probably</p> <p>21 suggest.</p> <p>22    Q. Would you ever advise a decision maker</p> <p>23 to forgive loans without having an understanding</p> <p>24 of the executive's compensation history?</p> <p>25    A. I probably would not suggest that you</p>	Page 34	<p>1           ALAN JOHNSON</p> <p>2 forgive the loans without having some knowledge of</p> <p>3 that. It's possible to get it.</p> <p>4     Q. Would you ever advise a decision maker</p> <p>5 to forgive loans as part of executive compensation</p> <p>6 without ever asking anybody for information</p> <p>7 relating to the executive's compensation history?</p> <p>8     A. I would not recommend that usually.</p> <p>9     Q. Okay. Let's talk about the entity's</p> <p>10 financial condition.</p> <p>11       In your opinion, is the entity's</p> <p>12 financial condition relevant for a decision maker</p> <p>13 to consider before entering into a loan</p> <p>14 forgiveness program?</p> <p>15    A. I think the financial condition is</p> <p>16 certainly relevant, and as I mentioned earlier,</p> <p>17 the significance of the events that you're trying</p> <p>18 to motivate.</p> <p>19       So yes, I think you want to know both.</p> <p>20 You'd want to know your financial condition and</p> <p>21 you want to know the significance of the events</p> <p>22 that you're trying to – to reward.</p> <p>23    Q. And why do you believe in your expert</p> <p>24 opinion that the decision maker should have an</p> <p>25 understanding of the entity's financial condition</p>	Page 35
<p>1           ALAN JOHNSON</p> <p>2 before agreeing to forgive loans?</p> <p>3     A. Well, I think you'd want to know just</p> <p>4 would the forgiveness of these loans be</p> <p>5 significant to the financial condition of the</p> <p>6 company. It may be significant to the individual</p> <p>7 but be trivial to the overall organization, so I</p> <p>8 think you'd want to know are these loans</p> <p>9 significant in terms of the financial condition of</p> <p>10 the company.</p> <p>11    Q. Can you think of any circumstance</p> <p>12 where it would be appropriate for a decision maker</p> <p>13 to agree to forgive loans as part of executive</p> <p>14 compensation without having an understanding of</p> <p>15 the entity's financial condition?</p> <p>16    A. No. I don't think that would be</p> <p>17 ideal. I think you would certainly – you would</p> <p>18 want to know the condition of the business.</p> <p>19    Q. Okay. I'm not asking you what's</p> <p>20 ideal.</p> <p>21    Can you ever – can you fathom any</p> <p>22 scenario where it would be appropriate for a</p> <p>23 decision maker to agree to forgive loans without</p> <p>24 having an understanding of the employer's</p> <p>25 financial condition?</p>	Page 36	<p>1           ALAN JOHNSON</p> <p>2     A. Well, I think if there's a chaotic</p> <p>3 financial situation, say the financial crisis or</p> <p>4 others where it's very difficult or impossible to</p> <p>5 get a clear understanding of the financial</p> <p>6 condition of the business or it's in dispute</p> <p>7 where – what the condition is.</p> <p>8       So that can exist, and I think in</p> <p>9 those situations you'd need to make a decision.</p> <p>10 Maybe forgiving the loans is appropriate even</p> <p>11 though you may not have a clear idea of the</p> <p>12 financial condition.</p> <p>13       So it's not ideal, but I've had</p> <p>14 clients, you know, where the financial condition</p> <p>15 was uncertain and different people had different</p> <p>16 opinions, but you still had to make a decision.</p> <p>17       So that's why I used the word "ideal."</p> <p>18 It would be ideal to have it, but sometimes you</p> <p>19 just don't have that – you don't have that</p> <p>20 clarity.</p> <p>21    Q. Do you have any reason to believe that</p> <p>22 during the seven-year period – withdrawn.</p> <p>23       Can you think of a circumstance where</p> <p>24 it would be appropriate for a decision maker to</p> <p>25 enter into a loan forgiveness program as part of</p>	Page 37

<p>1 ALAN JOHNSON</p> <p>2 executive compensation without even asking for</p> <p>3 information relating to a company's financial</p> <p>4 condition?</p> <p>5 A. Well, I don't – if they already had a</p> <p>6 good familiarity, they perhaps often don't need to</p> <p>7 ask, but if they weren't clear, then they should</p> <p>8 ask.</p> <p>9 Q. Okay.</p> <p>10 Is it fair to say that you would never</p> <p>11 advise a decision maker to enter into a forgivable</p> <p>12 loan program as part of executive compensation</p> <p>13 without having an understanding of the entity's</p> <p>14 financial condition?</p> <p>15 A. Well, I think – as I said earlier, I</p> <p>16 think there are situations where you just can't</p> <p>17 know what the condition is. If – if – I think</p> <p>18 the decision maker should try to understand the</p> <p>19 condition of the business to the best of their</p> <p>20 ability, but if that's not possible, they still</p> <p>21 may have to make a decision on loans or other –</p> <p>22 other compensation elements.</p> <p>23 Q. Let's say it is possible to understand</p> <p>24 the entity's financial condition. In a</p> <p>25 hypothetical world, if you could understand the</p>	Page 38	<p>1 ALAN JOHNSON</p> <p>2 entity's financial condition and it wasn't subject</p> <p>3 to dispute at that moment in time, would you be</p> <p>4 able to – would you ever advise the decision</p> <p>5 maker to enter into the loan forgiveness program</p> <p>6 without attempting to gain an understanding of</p> <p>7 that very financial condition?</p> <p>8 A. No. I would suggest to the client</p> <p>9 that they try to understand that condition.</p> <p>10 Q. And if there was information</p> <p>11 available, would you always advise your client to</p> <p>12 try to obtain that information concerning the</p> <p>13 entity's financial condition before entering into</p> <p>14 an agreement to forgive loans as part of executive</p> <p>15 compensation?</p> <p>16 A. I think you would almost always or</p> <p>17 often try to do that. I don't – again, there are</p> <p>18 practicalities of time frames and getting the data</p> <p>19 and so forth might enter into it, but yes, I think</p> <p>20 the – the general thesis is, if you're going to</p> <p>21 make forgivable loans, you should try to have an</p> <p>22 understanding of the condition of the business.</p> <p>23 Q. Okay. Let's drill down on that just a</p> <p>24 little bit and talk specifically about financial</p> <p>25 statements.</p>	Page 39
<p>1 ALAN JOHNSON</p> <p>2 When I use the phrase "financial</p> <p>3 statements," I'm thinking of your traditional</p> <p>4 package in an audit report, the balance sheet,</p> <p>5 statement of operations, cash flow, P&amp;L</p> <p>6 statements.</p> <p>7 You're familiar with that type of</p> <p>8 document, right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 In your opinion, should a decision</p> <p>12 maker review and understand the financial</p> <p>13 statements of the – of the employer before</p> <p>14 agreeing to enter into a loan forgiveness program?</p> <p>15 A. They should – they should have a</p> <p>16 basic understanding of financial statements, yes.</p> <p>17 Q. And that's the advice that you would</p> <p>18 always give to a decision maker, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And why would you give that advice?</p> <p>21 A. Well, I think that you would want –</p> <p>22 as part of making forgivable loans or any</p> <p>23 compensation, you would want to have a basic</p> <p>24 knowledge of the financial condition of the</p> <p>25 business.</p>	Page 40	<p>1 ALAN JOHNSON</p> <p>2 Q. Can you think of any circumstance</p> <p>3 where it would be appropriate for a decision maker</p> <p>4 to agree to forgive loans as part of an executive</p> <p>5 compensation package without having a basic</p> <p>6 knowledge of the financial condition of the</p> <p>7 employer?</p> <p>8 A. Well, I think, as I said earlier, if</p> <p>9 it's – if it's just not possible to do that, you</p> <p>10 just can't – it's chaotic enough or it's just</p> <p>11 very difficult to figure out the condition of the</p> <p>12 business, then you still have to make decisions,</p> <p>13 but you should strive to have an understanding</p> <p>14 before you make these decisions.</p> <p>15 Q. Can you think of any circumstance</p> <p>16 where a decision maker should enter into a loan</p> <p>17 forgiveness program without asking to see the</p> <p>18 financial statements of the employer?</p> <p>19 A. Well, if someone already has a good</p> <p>20 understanding, you may not need to supplement</p> <p>21 that, but if you don't have a clear understanding,</p> <p>22 you should have – you should try to obtain that.</p> <p>23 Q. Is it fair to say you would never</p> <p>24 advise a decision maker to agree to forgive loans</p> <p>25 as part of executive compensation without</p>	Page 41

<p>1           ALAN JOHNSON</p> <p>2 understanding the entity's financial statements,</p> <p>3 including its profit and loss and its balance</p> <p>4 sheet?</p> <p>5       A. As I said earlier, you would try to</p> <p>6 have that understanding if it's possible,</p> <p>7 absolutely.</p> <p>8       Q. Okay.</p> <p>9       Under the modification agreement</p> <p>10 that's described in your report, the 2018 loans</p> <p>11 are to be forgiven upon the sale of certain assets</p> <p>12 above cost.</p> <p>13       Do I have that right?</p> <p>14       A. Yes.</p> <p>15       Q. And so is it fair to call that kind of</p> <p>16 a contingency, the forgiveness is contingent upon</p> <p>17 a future event?</p> <p>18       A. Yes.</p> <p>19       Q. And the future event here, or the</p> <p>20 "subsequent event" as we call it sometimes, is the</p> <p>21sale of one of three assets above cost.</p> <p>22       Do I have that right?</p> <p>23       A. Yes.</p> <p>24       Q. I think you said this earlier, but</p> <p>25 just to make sure, before agreeing to provide</p>	Page 42	<p>1           ALAN JOHNSON</p> <p>2 compensation through forgivable loans, would you</p> <p>3 advise the decision maker under this scenario to</p> <p>4 make an assessment of the likelihood that the</p> <p>5 condition subsequent would occur?</p> <p>6       A. You would want to have that basic</p> <p>7 understanding. It's difficult to forecast, but</p> <p>8 yes, you would want to look at the magnitude of</p> <p>9 the forgivable – the amount of loans being</p> <p>10 forgiven and the significance of these</p> <p>11 accomplishments along with the probability of it</p> <p>12 actually happening.</p> <p>13       So you would want at least at a high</p> <p>14 level to have some either understanding or feel</p> <p>15 for the magnitude of the loans, the significance</p> <p>16 of the accomplishments and their likelihood of it</p> <p>17 happening.</p> <p>18       Q. And if we – if we applied those</p> <p>19 thoughts to this case, would you recommend or</p> <p>20 advise the decision maker that he or she obtain</p> <p>21 information about the cost of each of the three</p> <p>22 assets that are subject to the conditions</p> <p>23 subsequent?</p> <p>24       A. Yeah, you would want to understand the</p> <p>25 significance of these transactions, the proceeds,</p>	Page 43
<p>1           ALAN JOHNSON</p> <p>2 the – have an understanding of how significant</p> <p>3 these amounts are to the – to the company.</p> <p>4       Q. And would you also advise your client,</p> <p>5 who's the decision maker in this hypothetical,</p> <p>6 that he or she or it should obtain information</p> <p>7 about the value of those assets as of the date of</p> <p>8 the agreement?</p> <p>9       A. You should have a basic understanding</p> <p>10 of the value of these assets, where they're marked</p> <p>11 on the books, around the time you do the</p> <p>12 agreement.</p> <p>13       Q. Why do you believe that the decision</p> <p>14 maker should have at the time of the agreement</p> <p>15 information enabling him, her or it to make an</p> <p>16 assessment as to the likelihood that the condition</p> <p>17 subsequent will occur?</p> <p>18       A. Well, I think if you're trying to</p> <p>19 motivate someone or reward someone, you have to</p> <p>20 have some idea, is it likely to happen? Is it</p> <p>21 impossible? Is it certainty?</p> <p>22       Again, I think that's part of the</p> <p>23 calculus is to reward someone for achieving</p> <p>24 something that may be difficult with a significant</p> <p>25 payout but it's not impossible.</p>	Page 44	<p>1           ALAN JOHNSON</p> <p>2 So I think as you design either loans</p> <p>3 or more commonly, comp program, you've got to</p> <p>4 assess the difficulty and importance of these</p> <p>5 things happening.</p> <p>6       Q. Can you think of any circumstances</p> <p>7 where it would be appropriate for a decision maker</p> <p>8 to enter into an agreement to forgive loans based</p> <p>9 on some future event without having an</p> <p>10 understanding of the likelihood that that future</p> <p>11 event will occur?</p> <p>12       A. Well, usually, when we do these</p> <p>13 things, there's a great deal of judgment and</p> <p>14 subjectivity in that.</p> <p>15       So I think it is not generally</p> <p>16 quantifiable, whether you use the word "gut</p> <p>17 feeling" or "impression" or the difficulty of</p> <p>18 these things happening. Often, it's – it's quite</p> <p>19 a subjective assessment, how difficult these</p> <p>20 things are, so you want to try to have an</p> <p>21 understanding, but it can be frustrating. It can</p> <p>22 be quite subjective about whether – the</p> <p>23 likelihood or the difficulty of these things</p> <p>24 happening.</p> <p>25       Q. Well, let's just say hypothetically</p>	Page 45

<p>1           ALAN JOHNSON</p> <p>2 that I'm going to enter into an agreement that is</p> <p>3 going to permit me to – withdrawn.</p> <p>4           So let's say hypothetically I'm an</p> <p>5 employee and I've borrowed a hundred dollars from</p> <p>6 my employer, and my employer says to me, I'm going</p> <p>7 to forgive that hundred dollars if you sell any of</p> <p>8 three assets above cost. On the date that we</p> <p>9 entered into the agreement, each of the assets has</p> <p>10 cost me \$5 and each of the assets is worth \$100,</p> <p>11 so 20 times the cost on the date of the agreement.</p> <p>12           Do you think that's information that</p> <p>13 the decision maker should know before agreeing to</p> <p>14 forgive the \$100 loan?</p> <p>15           A. I think he should understand the value</p> <p>16 the asset that is – in your hypothetical, he</p> <p>17 should have an understanding of that and how</p> <p>18 significant in your hypothetical selling that</p> <p>19 would be to the business.</p> <p>20           Maybe that the proceeds of one of them</p> <p>21 is really significant in terms of the – turning</p> <p>22 the business around or providing liquidity or</p> <p>23 other types of things, he should have some idea of</p> <p>24 if one of those three assets are sold, what does</p> <p>25 that do to the firm and its future.</p>	Page 46	<p>1           ALAN JOHNSON</p> <p>2           Q. And is it fair to say that with the</p> <p>3 information about value and cost, the assessment</p> <p>4 as to whether or not the future event is likely to</p> <p>5 occur is not purely subjective and it's not purely</p> <p>6 based on a gut feeling, is that fair, if you have</p> <p>7 that information?</p> <p>8           A. It's hard. It's a lot closer to a gut</p> <p>9 feeling, subjective than objective. But it's hard</p> <p>10 to – your ability to actually sell something,</p> <p>11 when, to who, at what price, can be quite – is</p> <p>12 often quite subjective.</p> <p>13           So you may have – depending on</p> <p>14 circumstances, you may have good information of</p> <p>15 likelihood, but oftentimes, you really don't.</p> <p>16           Q. Would you – would you always advise</p> <p>17 the decision maker under this hypothetical to try</p> <p>18 to obtain as much information as he, she, or it</p> <p>19 can on the issues of cost and value of the three</p> <p>20 assets at issue?</p> <p>21           A. I would – I would tell clients to try</p> <p>22 to understand that as best they could.</p> <p>23           Q. Can you think of any circumstance</p> <p>24 where it would be appropriate for a decision maker</p> <p>25 to enter into a loan forgiveness agreement without</p>	Page 47
<p>1           ALAN JOHNSON</p> <p>2 even asking for that information?</p> <p>3           A. Well, in circumstances where they</p> <p>4 already thought they had a good understanding,</p> <p>5 they didn't probably need to ask, but you should</p> <p>6 try to have a good understanding.</p> <p>7           Again, as I said, the significance of</p> <p>8 these assets and whether – if they're sold, for</p> <p>9 example, what that impact would be on the</p> <p>10 business.</p> <p>11           Q. I think one of the things you've done</p> <p>12 in your report is to provide your assessment of</p> <p>13 compensation paid to comparable executives.</p> <p>14           Is that fair to describe at least a</p> <p>15 portion of your report?</p> <p>16           A. Yes.</p> <p>17           Q. Okay.</p> <p>18           In your opinion, is the amount and</p> <p>19 form of compensation paid to comparable executives</p> <p>20 relevant to a decision maker's determination of</p> <p>21 whether or not to enter into a forgiveness program</p> <p>22 as part of executive compensation?</p> <p>23           A. As I said earlier, that would be one</p> <p>24 of the things you would want to have – you would</p> <p>25 want to have a general understanding of, the pay</p>	Page 48	<p>1           ALAN JOHNSON</p> <p>2 history and the context of the situation.</p> <p>3           Q. Okay.</p> <p>4           In fact, this is what you sell. Isn't</p> <p>5 that right, one of the things you sell?</p> <p>6           A. To make sure I understand the</p> <p>7 question, what am I selling here?</p> <p>8           Q. One of the things you sell is your</p> <p>9 knowledge, expertise and experience about how</p> <p>10 comparable executives are compensated in the</p> <p>11 financial services industry, right?</p> <p>12           A. Yes.</p> <p>13           Q. And so is it fair to say that you</p> <p>14 believe the decision maker should have an</p> <p>15 understanding as to how comparable executives are</p> <p>16 compensated before agreeing to enter into an</p> <p>17 executive loan program – loan forgiveness</p> <p>18 program?</p> <p>19           A. I think more it would be about the</p> <p>20 individual's pay history. I think how other</p> <p>21 people in the industry is probably of less</p> <p>22 importance on that narrow issue.</p> <p>23           I think you'd want to know how has</p> <p>24 Mary or Jim been paid in the past on that issue</p> <p>25 rather – I think that would be more important</p>	Page 49

<p>1           ALAN JOHNSON</p> <p>2 than how other executives in the industry had been</p> <p>3 paid.</p> <p>4       Q. Well, let's say hypothetically that in</p> <p>5 the industry, very senior founding executives get</p> <p>6 paid on the average of \$6 million a year.</p> <p>7       A. Okay.</p> <p>8       Q. And the executive at issue has</p> <p>9 received \$6 million a year for at least, let's</p> <p>10 say, 7 years, just to say hypothetically.</p> <p>11       If a decision maker wanted to forgive</p> <p>12 loans of \$50 million, do you understand the</p> <p>13 decision maker should know, is that what other</p> <p>14 people doing this job are getting? Are they</p> <p>15 getting that kind of money?</p> <p>16       Don't you think they should know that</p> <p>17 before entering into the agreement?</p> <p>18       A. Yes, I think you would want to know</p> <p>19 the magnitude, in your example of \$50 million, how</p> <p>20 does that stack up to the compensation of the</p> <p>21 executive and how other people in the industry</p> <p>22 would have been paid?</p> <p>23       So yes, you would want to – in your</p> <p>24 hypothetical, the \$50 million, you would want to</p> <p>25 have some idea of how that – the magnitude of</p>	Page 50	<p>1           ALAN JOHNSON</p> <p>2 that money.</p> <p>3       Q. Right.</p> <p>4       A decision maker should try to take</p> <p>5 steps to avoid overpaying. Is that fair?</p> <p>6       A. A decision maker should try to both</p> <p>7 make sure you don't under or overpay. You should</p> <p>8 try to get it right and fair, whatever that means.</p> <p>9       Q. And one of the ways to get it right or</p> <p>10 fair is to try to have an understanding as to how</p> <p>11 comparable executives are compensated in the same</p> <p>12 industry. Is that fair?</p> <p>13       A. That's one of the factors you would</p> <p>14 want to consider, absolutely.</p> <p>15       Q. And you would recommend and advise</p> <p>16 your decision makers that they should attempt to</p> <p>17 gain an understanding of how comparable executives</p> <p>18 are paid before entering into a loan forgiveness</p> <p>19 program. Is that fair?</p> <p>20       A. They should try to be – whether they</p> <p>21 have it immediately or they should try to have an</p> <p>22 understanding – if they don't already, they</p> <p>23 should try to have an understanding how does this</p> <p>24 in your hypothetical \$50 million relate to, not</p> <p>25 only the executive, but how other people are paid.</p>	Page 51
<p>1           ALAN JOHNSON</p> <p>2       Q. Okay. Let's say hypothetically the</p> <p>3 decision maker has no prior knowledge as to how</p> <p>4 comparable executives are paid in the industry,</p> <p>5 would you recommend that such a decision maker</p> <p>6 hire somebody like yourself?</p> <p>7       A. They could hire someone like us or</p> <p>8 they could talk to their attorneys or they could</p> <p>9 do their own research or talk to the HR</p> <p>10 department. You could get it from many sources.</p> <p>11       But if someone were to ask me out of</p> <p>12 the blue, I would say, yeah, you should have an</p> <p>13 understanding, how does – how does the amount</p> <p>14 you're going to forgive stack up to the industry</p> <p>15 you're in? Is it a small amount, large amount?</p> <p>16       You should have some idea of the</p> <p>17 relative magnitude of the amount in question.</p> <p>18       Q. Is it fair to say that you would never</p> <p>19 advise a decision maker who has no knowledge of</p> <p>20 how comparable executives are paid to enter into a</p> <p>21 loan forgiveness program without at least</p> <p>22 attempting to understand how the – how the</p> <p>23 competition pays their employees?</p> <p>24       A. Well, the caveat of – the answer –</p> <p>25 the broad answer would be, yes, but the caveat</p>	Page 52	<p>1           ALAN JOHNSON</p> <p>2 would be how significant the loans were.</p> <p>3       If the loans were relatively small, it</p> <p>4 probably wouldn't be required. The larger the</p> <p>5 loans, generally, you would say – you would want</p> <p>6 to have a better understanding of pay practices in</p> <p>7 the industry.</p> <p>8       Q. Okay.</p> <p>9       Let's say hypothetically the people</p> <p>10 who are involved in the discussions concerning the</p> <p>11 forgiveness of the loans are the CEO and an</p> <p>12 outside director. Okay?</p> <p>13       Are you with me so far?</p> <p>14       A. Yes. I'm sorry.</p> <p>15       Q. And let's – let's assume that the</p> <p>16 outside director has no experience in the</p> <p>17 financial services industry. Let's assume that</p> <p>18 the outside director has never worked for the</p> <p>19 company. Let's assume that the outside director</p> <p>20 doesn't have access to the company's financial</p> <p>21 statements. Okay?</p> <p>22       With that hypothetical, would you</p> <p>23 advise the decision maker to utilize a source of</p> <p>24 information other than the CEO himself before</p> <p>25 entering into the agreement?</p>	Page 53

<p>1           ALAN JOHNSON</p> <p>2       A. In your hypothetical, as a director</p> <p>3 with fiduciary duties, you should try to have an</p> <p>4 understanding of the magnitude of what you're</p> <p>5 being asked to do, and you should try to have</p> <p>6 independent verification in one way or the other,</p> <p>7 is what being proposed, whether it be a loan or</p> <p>8 any other business decision, is this reasonable?</p> <p>9 You should try to have an understanding, yes.</p> <p>10     Q. Would you ever advise the decision</p> <p>11 maker in the circumstances that I've described in</p> <p>12 this hypothetical to rely solely on the CEO as the</p> <p>13 source of all information that would be considered</p> <p>14 before entering into the forgiveness program?</p> <p>15     A. Well, that would be very unusual. I</p> <p>16 think it really would depend on the circumstances.</p> <p>17       If the circumstance – I can have</p> <p>18 other hypotheticals where it – there could be a</p> <p>19 chaotic situation. It could be the – it was an</p> <p>20 extremist situation where you need to make a rapid</p> <p>21 decision and so forth.</p> <p>22       But in more typical situations, yes,</p> <p>23 you should try to get independent advice from, you</p> <p>24 know, others or your own research to find it. If</p> <p>25 you have to make an immediate decision, you know,</p>	Page 54	<p>1           ALAN JOHNSON</p> <p>2 you got to do what you got to do.</p> <p>3       Q. Let's take it out of the hypothetical.</p> <p>4       Have you ever advised a client to</p> <p>5 enter into a loan forgiveness program without</p> <p>6 having obtained any information from any source</p> <p>7 other than the executive or the employee who's the</p> <p>8 beneficiary under the agreement?</p> <p>9       A. I have not advised a client that way,</p> <p>10 no.</p> <p>11     Q. Would you ever advise a client to do</p> <p>12 that?</p> <p>13     A. Again, assuming it was a significant</p> <p>14 amount of money, no, I would not advise a client</p> <p>15 to do that.</p> <p>16     Q. Can you think of any – I guess you've</p> <p>17 already described if it's an extremist or a</p> <p>18 chaotic situation.</p> <p>19       Are those the only two situations that</p> <p>20 you can conjure up in your head where it might be</p> <p>21 appropriate for a decision maker to rely solely on</p> <p>22 the beneficiary of the agreement before entering</p> <p>23 into the loan forgiveness program?</p> <p>24     A. I think with the caveat I mentioned</p> <p>25 earlier, if the amounts were small, you know, not</p>	Page 55
<p>1           ALAN JOHNSON</p> <p>2 particularly meaningful, but if it's a meaningful</p> <p>3 amount, you would try to get information.</p> <p>4       Q. What if the amount constituted –</p> <p>5 withdrawn.</p> <p>6       Is it your understanding that the</p> <p>7 modification agreement pursuant to which certain</p> <p>8 loans will be forgiven in the future upon the</p> <p>9 occurrence of certain conditions subsequent, is it</p> <p>10 your understanding that that agreement applies not</p> <p>11 only to loans that were given to Mr. Dondero, but</p> <p>12 to loans to affiliated companies that Mr. Dondero</p> <p>13 either directly or indirectly owns and controls?</p> <p>14     A. My understanding from Mr. Dondero was</p> <p>15 all the loans. That came from him.</p> <p>16     Q. And how do you define "from him"?</p> <p>17     A. In the conversation – the</p> <p>18 conversations I had with him.</p> <p>19     Q. I just want to know, is it just the</p> <p>20 loans that Highland gave to him as an individual</p> <p>21 human being or does it also cover loans that</p> <p>22 Highland made to entities that are directly or</p> <p>23 indirectly owned or controlled by him?</p> <p>24     A. It was my understanding from him that</p> <p>25 it was all of the loans.</p>	Page 56	<p>1           ALAN JOHNSON</p> <p>2       Q. So do you believe that the decision</p> <p>3 maker should have a knowledge and understanding</p> <p>4 about all of the loans before entering into a</p> <p>5 forgiveness program?</p> <p>6       A. The decision maker should know the</p> <p>7 magnitude of the loans to be forgiven.</p> <p>8       Q. Do you think the decision maker should</p> <p>9 be familiar with the terms of each of the loans</p> <p>10 that are subject to the forgiveness agreement?</p> <p>11     A. I think the decision maker should have</p> <p>12 a general understanding of the terms of the loans,</p> <p>13 yes.</p> <p>14     Q. Do you think the decision maker should</p> <p>15 have an understanding as to why the loans were</p> <p>16 originally obtained?</p> <p>17     A. I think that's – it would be ideal to</p> <p>18 do that. I think it's probably less importance.</p> <p>19     Q. Would you advise the decision maker to</p> <p>20 obtain copies of the promissory notes?</p> <p>21     A. I would want the decision maker to be</p> <p>22 generally familiar with the loans. I don't – I</p> <p>23 don't know if they necessarily have to read each</p> <p>24 of the promissory notes, but I think they should</p> <p>25 have a general familiarity, what the loans are,</p>	Page 57

<p>1           ALAN JOHNSON</p> <p>2 the magnitudes, the broad terms, the interest</p> <p>3 rates and the basic features.</p> <p>4       Q. And if the decision maker weren't a</p> <p>5 sophisticated party, would you advise the decision</p> <p>6 maker to obtain advice concerning the nature,</p> <p>7 extent and structure of the loans that were under</p> <p>8 consideration for forgiveness?</p> <p>9       A. I think the decision maker should have</p> <p>10 an understanding of the loan – what they're</p> <p>11 forgiving, what the terms or – you know, you</p> <p>12 should have an understanding of the structure of</p> <p>13 the loans you're forgiving.</p> <p>14       Q. Could you contemplate any situation</p> <p>15 where a decision maker should enter into a</p> <p>16 forgiveness of loans without having an</p> <p>17 understanding of the scope and structure of the</p> <p>18 loans themselves?</p> <p>19       A. No. I think – I think – as I said,</p> <p>20 I think the decision maker should have a general</p> <p>21 understanding of the loans, the amounts, the terms</p> <p>22 at least – at least at reasonably high level.</p> <p>23       Q. Would you always advise your client to</p> <p>24 understand the nature and extent of each of the</p> <p>25 loans that was under consideration for forgiveness</p>	Page 58	<p>1           ALAN JOHNSON</p> <p>2 before actually agreeing to forgive those loans?</p> <p>3       A. If there are a lot of loans, I – it</p> <p>4 may not be practical.</p> <p>5           I think you'd want to have a general</p> <p>6 idea of the term, the amount, the interest rates.</p> <p>7 The exact provisions of each loan is probably less</p> <p>8 important. To have some understanding of how much</p> <p>9 is being at stake, when would they in general have</p> <p>10 been paid, what the interest rate would be.</p> <p>11           I think the ins and outs of each loan</p> <p>12 would probably be of less importance.</p> <p>13       Q. Do you think it would be important for</p> <p>14 the decision maker to know, let's just say</p> <p>15 hypothetically, as to whether the loans under</p> <p>16 consideration were demand loans or whether they</p> <p>17 were 30-year term notes?</p> <p>18       A. Yeah, I think you would want to know</p> <p>19 that. You would want to know – that would be one</p> <p>20 of the things you would want to know.</p> <p>21       Q. And why would you want to know that?</p> <p>22       A. I think if you're trying to design a</p> <p>23 plan, you'd want to have some idea of the urgency</p> <p>24 of the – of the loans.</p> <p>25           You mentioned a 30-year term, it</p>	Page 59
<p>1           ALAN JOHNSON</p> <p>2 perhaps is less urgent than a demand note, so I</p> <p>3 think if you're trying to incent someone to</p> <p>4 achieve something, you want to have some idea of</p> <p>5 the urgency of these loans that are outstanding.</p> <p>6       Q. Can you think of any circumstance</p> <p>7 where it would be appropriate for a decision maker</p> <p>8 to agree to forgive loans without having an</p> <p>9 understanding as to the number, value and</p> <p>10 structure of the loans that are to be forgiven?</p> <p>11       A. The number of loans is probably of</p> <p>12 less importance, as I said earlier. I think you'd</p> <p>13 want to know the rough magnitude of what we're</p> <p>14 forgiving, and I think you would want to know the</p> <p>15 basic structure of the loans.</p> <p>16       Q. I appreciate that, but can you think</p> <p>17 of any circumstance where the decision maker</p> <p>18 should agree to forgive loans without knowing the</p> <p>19 structure and aggregate value the loans being</p> <p>20 forgiven?</p> <p>21       A. No. I think – I think the decision</p> <p>22 maker should have a general understanding of the</p> <p>23 dollar amounts and the structure of the loans to</p> <p>24 be forgiven.</p> <p>25       Q. And you would never advise a client to</p>	Page 60	<p>1           ALAN JOHNSON</p> <p>2 forgive loans without knowing the dollar amount</p> <p>3 and the structure of the loans themselves,</p> <p>4 correct?</p> <p>5       A. That would not be my advice, no.</p> <p>6       Q. Okay.</p> <p>7           Do you believe that a decision maker</p> <p>8 who's considering entering into a loan forgiveness</p> <p>9 program as part of executive compensation has a</p> <p>10 duty to try to negotiate the best terms possible</p> <p>11 for the company?</p> <p>12       A. I think the decision maker has to have</p> <p>13 reasonable terms and a fair agreement. I don't</p> <p>14 think they have an obligation to necessarily</p> <p>15 strike the best possible deal. They've got to</p> <p>16 balance a number of factors, but the deal should</p> <p>17 clearly be fair to the company.</p> <p>18       Q. And why do you believe that a decision</p> <p>19 maker should make sure that the agreement is fair</p> <p>20 to the company before entering into it?</p> <p>21       A. Well, I think the – the decision</p> <p>22 maker has a responsibility to be fair to the</p> <p>23 shareholders and the other parties at the company,</p> <p>24 and the agreement should be fair to – to the</p> <p>25 company – the interest of the company.</p>	Page 61

<p>1           ALAN JOHNSON</p> <p>2       If they're in the position of making</p> <p>3   that decision and they're representing the</p> <p>4   company, the decision should be fair.</p> <p>5   Q. And how – how would you advise a</p> <p>6   decision maker to make sure that the agreement was</p> <p>7   fair before he, she, or it entered into it?</p> <p>8   A. Well, if we're talking about loans, as</p> <p>9   I said earlier, you want to know the rough</p> <p>10   magnitude of the loans and the terms. You'd want</p> <p>11   to know the achievement of these goals, how</p> <p>12   significant are they for the success of the</p> <p>13   company, and try to balance that, and the</p> <p>14   probabilities and other things.</p> <p>15       But you'd want to balance that in a</p> <p>16   fair way where you felt that the – if it's a</p> <p>17   loan, the forgiveness of these loans is – is</p> <p>18   fairly rewarded by the achievement of these goals.</p> <p>19   Q. And so in order to assess the</p> <p>20   fairness, you testified earlier that you would</p> <p>21   always advise the decision maker to the extent</p> <p>22   possible to obtain information concerning the</p> <p>23   executive's compensation history, correct?</p> <p>24   A. You would want to know that if they</p> <p>25   didn't know it already. You would want to have</p>	Page 62	<p>1           ALAN JOHNSON</p> <p>2   them have some idea of the individual's pay</p> <p>3   history. That would be one of the things you'd</p> <p>4   want to know.</p> <p>5   Q. And in order to assess the fairness of</p> <p>6   the transaction before entering into it, you would</p> <p>7   always recommend to the extent possible that the</p> <p>8   decision maker understand the financial condition</p> <p>9   of the employer, correct?</p> <p>10   A. You would want the decision maker to</p> <p>11   understand, as best they could in the</p> <p>12   circumstances, the condition, you know, of the</p> <p>13   company at that time.</p> <p>14   Q. And in order to assess the fairness of</p> <p>15   the transaction before you enter into it, you</p> <p>16   would always advise the decision maker to the</p> <p>17   extent possible to obtain and understand the</p> <p>18   employer's financial statements. Is that fair?</p> <p>19   A. As part of that, if they didn't</p> <p>20   already have an understanding – that's really</p> <p>21   part of the financial condition of the company –</p> <p>22   you'd want them to have a general understanding of</p> <p>23   the financial position of the company, you know,</p> <p>24   when the loan agreement was made.</p> <p>25   Q. And in order to assess the fairness of</p>	Page 63
<p>1           ALAN JOHNSON</p> <p>2   the transaction before entering into it – give me</p> <p>3   one second, please. Sorry.</p> <p>4       Before entering the – in order to</p> <p>5   assess the transaction – withdrawn.</p> <p>6       In order to assess the fairness of a</p> <p>7   transaction before entering into it, you would</p> <p>8   always advise the decision maker to obtain</p> <p>9   information so that he, she, or it, could assess</p> <p>10   the likelihood of any future, subsequent events</p> <p>11   for which the forgiveness is contingent. Is that</p> <p>12   fair?</p> <p>13   A. The best you can, you want to at least</p> <p>14   have an impression of the difficulty or likelihood</p> <p>15   of these events being achieved.</p> <p>16       As I said earlier, that often is quite</p> <p>17   subjective. You have an impression, but you at</p> <p>18   least want to have some impression as best you can</p> <p>19   of the likelihood and importance of these things</p> <p>20   happening.</p> <p>21   Q. And – and in order to assess the</p> <p>22   fairness of the transaction before entering into</p> <p>23   it, you would always recommend that the decision</p> <p>24   maker seek and obtain as much information as</p> <p>25   possible about how comparable executives are paid.</p>	Page 64	<p>1           ALAN JOHNSON</p> <p>2   Is that fair?</p> <p>3   A. As part of making this, I think you</p> <p>4   would want to have some idea of the magnitude of</p> <p>5   the loan being forgiven and how does that stack up</p> <p>6   with the pay of other people in the industry, the</p> <p>7   context of those decisions.</p> <p>8   Q. And in order to determine the fairness</p> <p>9   of the loan before – withdrawn.</p> <p>10       In order to determine the fairness of</p> <p>11   a forgiveness agreement before entering into it,</p> <p>12   you would always advise the decision maker to have</p> <p>13   at least an understanding as to the aggregate</p> <p>14   value and the structure of the loans that are to</p> <p>15   be forgiven, correct?</p> <p>16   A. Yes, you would want to have that</p> <p>17   knowledge.</p> <p>18   Q. Okay.</p> <p>19       So let's go back to the hypothetical</p> <p>20   where you have the CEO and an outside director</p> <p>21   who's not familiar with the industry and doesn't</p> <p>22   have access to financial statements or any</p> <p>23   information about comparable executives.</p> <p>24       In that hypothetical, if the executive</p> <p>25   were to go to the outside director and make a</p>	Page 65

<p>1           ALAN JOHNSON</p> <p>2 proposal regarding loan forgiveness, would you</p> <p>3 advise that decision maker to try to negotiate</p> <p>4 with the executive?</p> <p>5       A. Well, it depends on what the terms are</p> <p>6 being proposed. It may on its – its face be a</p> <p>7 fair deal and you don't need to negotiate. If</p> <p>8 the – if the term – if the director believes the</p> <p>9 terms are not as being proposed fair, yes, they</p> <p>10 should negotiate and try to get an agreement that</p> <p>11 is at least fair from the standpoint of the</p> <p>12 company.</p> <p>13     Q. Well, in my hypothetical, assume that</p> <p>14 the decision maker, the director, doesn't have any</p> <p>15 information concerning the executive's</p> <p>16 compensation history, doesn't have an</p> <p>17 understanding of the entity's financial condition,</p> <p>18 hasn't obtained or reviewed the entity's financial</p> <p>19 statements, hasn't spoken to anybody other than</p> <p>20 the CEO himself, has no experience in the</p> <p>21 industry, has no expertise in the area of</p> <p>22 executive compensation, would you advise that</p> <p>23 particular decision maker to enter into the</p> <p>24 agreement that's first proposed by the CEO without</p> <p>25 negotiation?</p>	Page 66	Page 67
<p>1           ALAN JOHNSON</p> <p>2       A. Well, I think the director could get</p> <p>3 lucky where the proposal was imminently fair and</p> <p>4 you – you put it in place, but certainly, you're</p> <p>5 at risk of agreeing to something that's not fair.</p> <p>6 But a director or a company could get lucky in</p> <p>7 that the proposal was – was fair on its face,</p> <p>8 so...</p> <p>9       Q. Would you ever advise a client to –</p> <p>10 who was a decision maker who knew nothing to enter</p> <p>11 into the agreement and hope that he, she, or it</p> <p>12 got lucky?</p> <p>13     A. I do not advise clients to try to get</p> <p>14 lucky, no.</p> <p>15     Q. Have you ever heard of a decision</p> <p>16 maker – withdrawn.</p> <p>17     In your 30 years' experience, have you</p> <p>18 ever heard of a decision maker entering into a</p> <p>19 loan forgiveness program with no knowledge of the</p> <p>20 executive's employment history, the employer's</p> <p>21 financial condition, without an understanding of</p> <p>22 the financial statements, with no knowledge of</p> <p>23 comparable executives, have you ever heard of</p> <p>24 anybody like that ever entering into a loan</p> <p>25 forgiveness program?</p>	Page 68	Page 69

<p>1           ALAN JOHNSON</p> <p>2 you would advise the decision maker, don't put</p> <p>3 that in writing?</p> <p>4       A. No. No, we wouldn't advise that.</p> <p>5 Although unfortunately, many of our clients don't</p> <p>6 put things in writing, but that would not be our</p> <p>7 advice.</p> <p>8       Q. How about a hypothetical where the</p> <p>9 agreement to forgive loans encompassed more than a</p> <p>10 dozen loans, would you also recommend that there</p> <p>11 be a written record of the identity of the loans</p> <p>12 that were the subject of the agreement?</p> <p>13      A. If there were a dozen meaningful</p> <p>14 loans, we would recommend that you have a catalog</p> <p>15 of what the loans are talking about, absolutely.</p> <p>16      Q. Can you think of any scenario where it</p> <p>17 would be appropriate to enter into an agreement</p> <p>18 for the forgiveness of a dozen or more loans</p> <p>19 without having any written record of it?</p> <p>20     A. As I said earlier, we would recommend</p> <p>21 that all of these agreements be put in writing.</p> <p>22     Q. As an expert on executive</p> <p>23 compensation, have you ever advised the decision</p> <p>24 maker to enter into an oral agreement concerning</p> <p>25 forgivable loans?</p>	Page 70	<p>1           ALAN JOHNSON</p> <p>2       A. I – I would never – we always – I</p> <p>3 would always want to have it in writing.</p> <p>4       Q. So let's go back to my hypothetical</p> <p>5 where you have an agreement between a CEO and an</p> <p>6 outside director. If you were advising the</p> <p>7 outside director, would you tell him or her that</p> <p>8 your advice is to make sure that somebody in the</p> <p>9 organization other than the CEO knows about the</p> <p>10 terms in existence of the loan forgiveness</p> <p>11 program?</p> <p>12      A. I would tell the outside director that</p> <p>13 other people should be informed.</p> <p>14           Other directors, the – yes, I would</p> <p>15 want other people – I would – if I were asked, I</p> <p>16 would – I would suggest or recommend that other</p> <p>17 people be informed.</p> <p>18           Q. And why would you make – why would</p> <p>19 you give that advice?</p> <p>20      A. You would want – at just an</p> <p>21 operational level, you would want to make sure</p> <p>22 your finance department was aware that certain</p> <p>23 payments might stop or in preparing the financial</p> <p>24 statements or – or other just operational issues,</p> <p>25 so, again, there's no misunderstanding as you put</p>	Page 71
<p>1           ALAN JOHNSON</p> <p>2 your financial statements together or just</p> <p>3 operationalize these loans.</p> <p>4       Q. In your – in your experience, do</p> <p>5 companies that enter into loan forgiveness</p> <p>6 programs customarily include reference to the</p> <p>7 agreements in their financial statements or in</p> <p>8 their books and records?</p> <p>9       A. It's a mixed practice. Some people do</p> <p>10 and some people don't, particularly private firms.</p> <p>11      Q. Have you ever heard of a situation</p> <p>12 where the decision maker and the executive enter</p> <p>13 into a loan forgiveness program and never tell</p> <p>14 anybody about the terms or existence of the</p> <p>15 program until after litigation is commenced?</p> <p>16      A. I don't know if I can – sitting here</p> <p>17 if I can recall a loan forgiveness program.</p> <p>18       I can – there's certainly other</p> <p>19 facets of compensation where things weren't</p> <p>20 documented and there's all kinds of disputes, but</p> <p>21 I can't sitting here think of another loan</p> <p>22 forgiveness program.</p> <p>23      Q. Okay. I appreciate that. My question</p> <p>24 is just a little bit different.</p> <p>25       Can you recall any instance in your</p>	Page 72	<p>1           ALAN JOHNSON</p> <p>2 career where you've heard about a decision maker</p> <p>3 who entered into a loan forgiveness program with</p> <p>4 an employee but never told anybody in the world</p> <p>5 about that until after litigation was commenced?</p> <p>6       A. I can't recall any sitting here.</p> <p>7       Q. Okay. And you would never recommend</p> <p>8 that a decision maker keep to him or herself the</p> <p>9 entry into any agreement concerning the</p> <p>10 forgiveness of loans?</p> <p>11      A. I think, again, we would – I would</p> <p>12 always recommend things be in writing with the</p> <p>13 caveat if it was a small or trivial amount,</p> <p>14 perhaps it wasn't needed.</p> <p>15      Q. In your opinion are the loans at issue</p> <p>16 in this case small or trivial?</p> <p>17      A. No.</p> <p>18       MR. MORRIS: Okay. We've been going</p> <p>19 an hour and a half. I really appreciate</p> <p>20 your patience, sir.</p> <p>21           Can we take just a 10-minute break and</p> <p>22 come back at 10:40 eastern? It's actually a</p> <p>23 13-minute break.</p> <p>24       THE WITNESS: Okay.</p> <p>25       MR. MORRIS: Okay. Thank you very</p>	Page 73

<p>1 ALAN JOHNSON  2 much.  3 (Recess taken from 10:27 a.m. until  4 10:40 a.m.)  5 BY MR. MORRIS:  6 Q. Mr. Johnson, did you speak with  7 anybody during the break about your testimony  8 today?  9 A. No.  10 Q. Did you communicate with anybody in  11 writing about your testimony today during the  12 break?  13 A. No.  14 Q. Do you recall when you were –  15 withdrawn. I apologize.  16 Are you – were you engaged in this  17 case or was your firm engaged in this case or is  18 it one in the same?  19 I just want to make sure I get it  20 right.  21 A. I was engaged as an expert witness as  22 part of my firm.  23 Q. Okay.  24 Do you recall when you were engaged in  25 this case?</p>	Page 74	<p>1 ALAN JOHNSON  2 A. Maybe March or April of this year.  3 Q. Do you have an engagement letter?  4 A. We did, yes.  5 Q. Okay.  6 And would that engagement letter  7 reflect the date upon which you were engaged in  8 this matter?  9 A. Yes, it would.  10 Q. Okay.  11 Did you ever review any of the  12 pleadings in this case, any of the complaints?  13 A. I just don't – I don't recall.  14 Q. Did you have any familiarity with  15 Highland Capital Management, L.P. or any of its  16 affiliates prior to your engagement in this case?  17 A. I don't believe so.  18 Q. Did you have any familiarity with  19 James Dondero prior to being retained in this  20 case?  21 A. I don't believe so.  22 Q. I think you said that you were  23 retained by the Stinson firm.  24 Do I have that right?  25 A. Yes.</p>	Page 75
<p>1 ALAN JOHNSON  2 Q. And had you done work for the Stinson  3 firm prior to this case?  4 A. I don't believe so.  5 Q. You have been retained by my firm  6 before. Is that right?  7 A. Yes.  8 Q. Is that just one occasion?  9 A. No, several times.  10 Q. Oh, okay. Well, it's nice to meet you  11 because we've never worked together, right, just  12 for the record?  13 A. Yes.  14 Q. All right. We're going to put your  15 expert report up on the screen. I forgot what  16 number we have premarked it, but let's take a look  17 at it.  18 MS. CANTY: Sixty-two, John.  19 MR. MORRIS: Thank you very much.  20 (Exhibit 62, expert report, was marked  21 for identification at this time.)  22 BY MR. MORRIS:  23 Q. So your report, Mr. Johnson, is up on  24 the screen. It's been premarked as Exhibit 62 for  25 our purposes.</p>	Page 76	<p>1 ALAN JOHNSON  2 MR. MORRIS: And can we go to page 16,  3 please.  4 Q. And if we go to the bottom of the  5 page, is that your signature, sir?  6 A. Yes.  7 Q. And did you sign this on or about  8 May 28, 2021?  9 A. Yes.  10 Q. You haven't amended this report since  11 May. Is that right?  12 A. That's right.  13 Q. Okay.  14 And there's no modification to any of  15 your opinions that are set forth in this report,  16 correct?  17 A. That's correct.  18 Q. Okay.  19 MR. MORRIS: Can we go to page 25,  20 please.  21 Q. And do you see that there's a list  22 here of documents reviewed?  23 A. Yes.  24 Q. And I'm embarrassed to say, but I've  25 actually looked at all the documents.</p>	Page 77

<p>1           ALAN JOHNSON</p> <p>2        Is it – is it fair to characterize</p> <p>3   the documents that you reviewed as either</p> <p>4   tax-related information, financial statements from</p> <p>5   NexPoint or Highland Capital Management Fund</p> <p>6   Advisors or certain agreements between and among</p> <p>7   the parties?</p> <p>8       A. I think it's certainly that. There</p> <p>9   may be other things, but certainly, those were</p> <p>10   included in there, yes.</p> <p>11      Q. Can you identify any other type of</p> <p>12   document that you recall reviewing prior to the</p> <p>13   preparation of this report other than tax-related</p> <p>14   information, financial statements for NexPoint and</p> <p>15   HCMFA and certain agreements between and among the</p> <p>16   parties?</p> <p>17      A. You had asked about the pleadings, and</p> <p>18   I just don't recall, but with that – with that</p> <p>19   caveat, I think that's accurate.</p> <p>20      Q. Okay.</p> <p>21      And to the best of your knowledge,</p> <p>22   does this page identify every document that you</p> <p>23   were provided with prior to the preparation of</p> <p>24   your report?</p> <p>25      A. Yes, I believe so.</p>	Page 78	Page 79
<p>1           ALAN JOHNSON</p> <p>2        Q. Okay.</p> <p>3        Do you remember for what years the</p> <p>4   financial statements were for Highland?</p> <p>5       A. If I recall, they were 2014, I</p> <p>6   believe, through – it's either '14 or '15 through</p> <p>7   '19, I believe.</p> <p>8       Q. And reviewing these documents didn't</p> <p>9   cause you to amend or modify your opinions in any</p> <p>10   way, correct?</p> <p>11      A. No.</p> <p>12      Q. Okay. I'm just going to ask you a</p> <p>13   series of questions to see if you're familiar with</p> <p>14   any of the following categories of documents.</p> <p>15      You mentioned that you saw some loan</p> <p>16   documents.</p> <p>17      Do I have that right?</p> <p>18      A. Yes.</p> <p>19      Q. Would the loan documents that you have</p> <p>20   in mind be promissory notes?</p> <p>21      A. I'm not sure what the definition of a</p> <p>22   "promissory note" is.</p> <p>23      Q. Are you familiar with promissory notes</p> <p>24   generally?</p> <p>25      A. I'm familiar with notes, but I'm not</p>	Page 80	Page 81
<p>1           ALAN JOHNSON</p> <p>2        sure of the legal meaning of what a promissory</p> <p>3   note is.</p> <p>4       Q. I think you mentioned that certain of</p> <p>5   the loan documents that you saw referenced what</p> <p>6   I'll characterize as a roll-up of existing loans.</p> <p>7       Do I have that right?</p> <p>8       A. I saw that described, yes.</p> <p>9       Q. And was that – was there a schedule</p> <p>10   to the document entitled, I think, either</p> <p>11   Exhibit A or Schedule A that listed various loans,</p> <p>12   including the principal amount and the interest</p> <p>13   that was outstanding as of the date of the</p> <p>14   document?</p> <p>15      A. I've seen schedules like that, yes.</p> <p>16      Q. Okay.</p> <p>17      Other than – other than the documents</p> <p>18   with the schedules that – that you've just</p> <p>19   acknowledged seeing, do you recall seeing any</p> <p>20   other loan documents prior to today's deposition?</p> <p>21      A. If it's not on the list that we're</p> <p>22   looking at, I don't recall anything else.</p> <p>23      Q. Do you know where you got these</p> <p>24   documents – withdrawn.</p> <p>25      Who gave you these documents?</p>		

<p>1           ALAN JOHNSON</p> <p>2   A. They're from the Stinson law firm.</p> <p>3   Q. And do you recall when the Stinson law</p> <p>4 firm gave you these documents?</p> <p>5   A. And "these documents" refer to prior</p> <p>6 to writing the report or recently?</p> <p>7   Q. I apologize. Great question.</p> <p>8   I'm only asking about the loan</p> <p>9 documents and the financial statements that you</p> <p>10 have testified to having received after the date</p> <p>11 of this report.</p> <p>12   A. I've received it from the law firm</p> <p>13 within the last week.</p> <p>14   Q. Did you – did you ask them for</p> <p>15 documents or did they give them to you of their</p> <p>16 own accord?</p> <p>17   A. I had asked them for documents prior</p> <p>18 to writing my report, and then I think we asked</p> <p>19 for documents getting ready for this deposition.</p> <p>20   Q. And what they gave you in response to</p> <p>21 your request were the loan documents with the</p> <p>22 schedule listing certain principal and interest</p> <p>23 due on the loans as well as, to the best of your</p> <p>24 recollection, financial statements for HCM, L.P.</p> <p>25 for around 2014 or '15 through around 2019. Is</p>	Page 82	Page 83
<p>1           ALAN JOHNSON</p> <p>2 PricewaterhouseCoopers was Highland's outside</p> <p>3 auditors?</p> <p>4   A. I remember seeing PwC, yes.</p> <p>5   Q. Are you aware that PwC gave a</p> <p>6 deposition in this case after the date you had</p> <p>7 authored your report?</p> <p>8   A. I was not aware of that.</p> <p>9   Q. So is it fair to say that you've never</p> <p>10 seen PricewaterhouseCoopers' deposition</p> <p>11 transcript?</p> <p>12   A. I have not.</p> <p>13   Q. And is it fair to say that you have no</p> <p>14 knowledge about what, if anything,</p> <p>15 PricewaterhouseCoopers testified to in this case?</p> <p>16   A. I do not know.</p> <p>17   Q. Have you ever heard of a Dugaboy</p> <p>18 Investment Trust?</p> <p>19   A. Dugaboy? I don't believe so.</p> <p>20   Q. So is it fair to say you have no</p> <p>21 knowledge as to whether or not the Dugaboy</p> <p>22 Investment Trust testified in this case?</p> <p>23   A. I have no knowledge.</p> <p>24   Q. So it's fair to say that you've never</p> <p>25 seen a deposition transcript relating to any</p>	Page 84	Page 85

<p>1           ALAN JOHNSON</p> <p>2   A. Within the last week.</p> <p>3   Q. Do you know if he testified – do you</p> <p>4   know when the deposition was?</p> <p>5   A. I don't recall.</p> <p>6   Q. Do you recall – did you actually see</p> <p>7   a transcript?</p> <p>8   A. I saw the transcript, yes.</p> <p>9   Q. Did you see one transcript or more</p> <p>10   than one transcript?</p> <p>11   A. Just one.</p> <p>12   Q. And do you know if that deposition</p> <p>13   took place in May or did that deposition take</p> <p>14   place more recently?</p> <p>15   A. I – I don't know.</p> <p>16   Q. Were you given – were you provided a</p> <p>17   copy of the entire transcript?</p> <p>18   A. I received an excerpt – I'm not sure.</p> <p>19   I focused on an excerpt, but I'm not sure if I</p> <p>20   received the whole transcript.</p> <p>21   Q. And were you directed to that</p> <p>22   particular excerpt that you looked at?</p> <p>23   A. Yes.</p> <p>24   Q. And who directed you to that excerpt?</p> <p>25   A. The Stinson law firm.</p>	Page 86	Page 87
<p>1           ALAN JOHNSON</p> <p>2 I think that was – that was – for some reason, I</p> <p>3 recall that number.</p> <p>4   Q. Have you received – withdrawn.</p> <p>5   Other than the loan documents and</p> <p>6 financial statements you've described as well as</p> <p>7 the excerpt from Mr. Dondero's deposition, have</p> <p>8 you received any information concerning</p> <p>9 Mr. Dondero's compensation that was produced by</p> <p>10 Highland after May 28, 2021?</p> <p>11   A. I recall there was a – an excel file</p> <p>12 that had some additional things on compensation.</p> <p>13 Yeah, I think there was an excel file that broke</p> <p>14 out, you know, different elements of compensation.</p> <p>15   Q. When did you receive that?</p> <p>16   A. Sometime in October.</p> <p>17   Q. Did you receive anything in October</p> <p>18 other than the Excel file that you've just</p> <p>19 described and the loan documents and financial</p> <p>20 statements and excerpt from Mr. Dondero's</p> <p>21 transcript?</p> <p>22   A. Not that I recall.</p> <p>23   Q. Do you recall anything about the Excel</p> <p>24 file?</p> <p>25   A. It had different elements of pay. It</p>	Page 88	Page 89

<p>1           ALAN JOHNSON</p> <p>2        In the first sentence, you wrote, "in</p> <p>3 preparing this report, I've considered certain</p> <p>4 documents provided to me, interviews with</p> <p>5 Mr. Dondero, and former Highland or affiliate</p> <p>6 employees."</p> <p>7        Do you see that?</p> <p>8        A. Yes.</p> <p>9        Q. When did you interview Mr. Dondero?</p> <p>10      A. Probably early May, early May of this</p> <p>11 year.</p> <p>12      Q. Is that the only time you've</p> <p>13 communicated with him directly concerning this</p> <p>14 case?</p> <p>15      A. I think I mentioned earlier I talked</p> <p>16 to him about the Next Bank – in the last week</p> <p>17 about the Next Bank loans, and then I talked to</p> <p>18 him prior to this report.</p> <p>19       I think those are the only times.</p> <p>20      Q. And did you speak with him on the</p> <p>21 phone? Did you meet with him in person or some</p> <p>22 other form of communication?</p> <p>23      A. Didn't – it was not in person. It</p> <p>24 was either a phone call or Zoom. I don't recall.</p> <p>25      Q. Do you recall how many phone calls or</p>	Page 90	Page 91
<p>1           ALAN JOHNSON</p> <p>2 this interview?</p> <p>3      A. We talked about his duties,</p> <p>4 responsibilities, went into what he – what he was</p> <p>5 involved in going back in time to the current, his</p> <p>6 duties, how he ran the firm. So we spent a fair</p> <p>7 amount of time talking about that.</p> <p>8       Talked about the different – these</p> <p>9 loans and the purpose of the loans, his philosophy</p> <p>10 around the loans.</p> <p>11       I think those were the two broad –</p> <p>12 the two broad categories.</p> <p>13      Q. Did he describe for you in any way the</p> <p>14 agreement that was entered into in late 2018,</p> <p>15 early 2019 relating to the forgiveness of the</p> <p>16 loans?</p> <p>17      A. Yes. Yes, he did.</p> <p>18      Q. What did he tell you about that?</p> <p>19      A. He said that the – the structure to</p> <p>20 reward him for a successful transaction with one</p> <p>21 of these three portfolio investments, that was the</p> <p>22 purpose, that loans had been used in the company</p> <p>23 in the past, that the loans were – had always</p> <p>24 intended to be forgiven, and this was simply</p> <p>25 codifying and structured the intent of the loans</p>	Page 92	Page 93
<p>1           ALAN JOHNSON</p> <p>2 all along.</p> <p>3      Q. Did he identify who the decision maker</p> <p>4 was who acted on behalf of the company?</p> <p>5      A. He – I don't believe that came up. I</p> <p>6 don't recall hearing that.</p> <p>7      Q. Did you ask him any questions that</p> <p>8 you – your gut told you he wasn't able to answer</p> <p>9 completely?</p> <p>10     A. No. I thought he was candid. I</p> <p>11 thought he was straightforward. I didn't – the</p> <p>12 questioning that I had with him, I didn't find –</p> <p>13 he answered the questions I had about both his</p> <p>14 role and the – how these loans were intended to</p> <p>15 operate.</p> <p>16     Q. Did he tell you that under the</p> <p>17 agreement he entered into with the decision maker,</p> <p>18 the loans would be forgiven if the assets were</p> <p>19 sold not by him but by a third party?</p> <p>20     A. I don't – I don't recall that, no.</p> <p>21     Q. It doesn't say that in your report,</p> <p>22 does it?</p> <p>23     A. It does not.</p> <p>24     Q. And you don't recall him specifically</p> <p>25 telling you that one of the terms of the agreement</p>	Page 93	

<p>1           ALAN JOHNSON</p> <p>2 was that all of the loans subject to the agreement</p> <p>3 would be forgiven if any of the three assets were</p> <p>4 sold by a third party. Is that fair?</p> <p>5     A. We didn't get into that, no.</p> <p>6     Q. And he didn't tell you that, correct?</p> <p>7     A. No.</p> <p>8     Q. Do your opinions rely on anything that</p> <p>9 Mr. Dondero told you?</p> <p>10    A. Certainly, the – his role was in –</p> <p>11 my opinion on what his role was, which formed the</p> <p>12 compensation thing, is influenced by what he said</p> <p>13 about this role. So yes, it impacted that, you</p> <p>14 know, part of the report.</p> <p>15    Q. Okay.</p> <p>16    So other than his role and his duties</p> <p>17 and responsibilities, is there anything else that</p> <p>18 Mr. Dondero told you during the interview that you</p> <p>19 have relied upon in formulating your opinions?</p> <p>20    A. I don't believe so.</p> <p>21    Q. How many former Highland or affiliate</p> <p>22 employees did you interview?</p> <p>23    A. I interviewed four.</p> <p>24    Q. Do you recall the names of any of</p> <p>25 them?</p>	Page 94	<p>1           ALAN JOHNSON</p> <p>2     A. Adkins, Hurley, Lawlor, and Cote.</p> <p>3     Q. When did you interview those</p> <p>4 individuals?</p> <p>5     A. Probably early May of this year.</p> <p>6     Q. Do you have any notes from those</p> <p>7 interviews?</p> <p>8     A. I do not.</p> <p>9     Q. Do you know if your colleague has any</p> <p>10 notes from those interviews?</p> <p>11    A. I don't think so.</p> <p>12    Q. Do you know if there's any written</p> <p>13 record at all of the interviews you conducted with</p> <p>14 those former Highland or affiliate employees?</p> <p>15    A. I don't believe so.</p> <p>16    Q. Did you speak to them all at one time</p> <p>17 or did you speak to them individually?</p> <p>18    A. Individually over a few days.</p> <p>19    Q. Let's take them one at a time.</p> <p>20    Mr. Adkins, do you recall the</p> <p>21 substance of what Mr. Adkins told you?</p> <p>22    A. The substance of the four interviews</p> <p>23 were very similar. They described his role. They</p> <p>24 described their experiences with loans. So the –</p> <p>25 the comments from the four were very similar.</p>	Page 95
<p>1           ALAN JOHNSON</p> <p>2     Q. So I apologize, I wasn't writing fast</p> <p>3 enough.</p> <p>4     A. I'm sorry –</p> <p>5     Q. I have Adkins –</p> <p>6     A. – I apologize.</p> <p>7     Q. I have Mr. Adkins, Mr. Lawlor, and who</p> <p>8 were the other two?</p> <p>9     A. Mr. Hurley and Mr. Cote.</p> <p>10    I believe those are the names.</p> <p>11    Q. Did any of them tell you – withdrawn.</p> <p>12    Did all of them tell you that they had</p> <p>13 obtained loans from Highland which were</p> <p>14 subsequently forgiven in whole or in part?</p> <p>15    A. I believe so.</p> <p>16    Q. Did any of them tell you how much</p> <p>17 money was forgiven?</p> <p>18    A. We talked about that, yes. They</p> <p>19 described the amounts.</p> <p>20    Q. Okay.</p> <p>21    What amounts do you recall being</p> <p>22 described as having been forgiven by Highland?</p> <p>23    A. It was in the hundreds of thousands.</p> <p>24    Q. Did any of them tell you that they had</p> <p>25 ever had a loan from Highland that was forgiven in</p>	Page 96	<p>1           ALAN JOHNSON</p> <p>2     an amount equal to or more than \$500,000?</p> <p>3     A. They were a little sketchy on the</p> <p>4 exact amounts, but my impression, they ranged</p> <p>5 from, say, a quarter million to maybe \$500,000 or</p> <p>6 a little more. That – that was their</p> <p>7 recollections.</p> <p>8     Q. Did – did you learn from these four</p> <p>9 interviews when the last of these loans was</p> <p>10 forgiven?</p> <p>11    A. Probably 8 or 10 years ago.</p> <p>12    Q. Did anybody – withdrawn.</p> <p>13    Did any of the four of them inform you</p> <p>14 that Highland had forgiven any loans to any</p> <p>15 officer or employee in the last 8 to 10 years?</p> <p>16    A. I don't recall them saying that, no.</p> <p>17    Q. Did you – do you recall asking them</p> <p>18 when was the last loan that Highland ever forgave?</p> <p>19    A. I don't believe I asked that question.</p> <p>20    Q. And as you sit here right now, you</p> <p>21 have no knowledge as to when the last loan that</p> <p>22 Highland gave that was forgiven in whole or in</p> <p>23 part, correct?</p> <p>24    A. I don't have that knowledge, no.</p> <p>25    Q. Other than the loans that were</p>	Page 97

<p>1           ALAN JOHNSON</p> <p>2 described for you by these four individuals, can</p> <p>3 you identify any other loan that Highland has ever</p> <p>4 forgiven?</p> <p>5       A. I don't have any other knowledge, no.</p> <p>6       Q. Did any of these four individuals give</p> <p>7 you any documents relating to any aspect of your</p> <p>8 report?</p> <p>9       A. No.</p> <p>10      Q. Did any of them give you any documents</p> <p>11 that would substantiate the information that they</p> <p>12 provided to you during the interview?</p> <p>13      A. They didn't provide any documents, no.</p> <p>14      Q. Did you ask them if they had any</p> <p>15 documents to substantiate what you were told?</p> <p>16      A. Yes. Yes, I did.</p> <p>17      Q. And they told you that they didn't</p> <p>18 have any.</p> <p>19       Do I have that right?</p> <p>20      A. Yes, that's right.</p> <p>21      Q. I think you testified that you do not</p> <p>22 know who the decision maker was who entered into</p> <p>23 the agreement with Mr. Dondero in late 2018 or</p> <p>24 early 2019 with respect to the forgiveness of the</p> <p>25 loans.</p>	Page 98	Page 99
<p>1           ALAN JOHNSON</p> <p>2 into the agreement with Mr. Dondero?</p> <p>3       A. If your assertion is true, then I –</p> <p>4 then I – I did not know that.</p> <p>5       Q. Okay.</p> <p>6       And is it fair to say then that you</p> <p>7 don't know that she was deposed in this case?</p> <p>8       A. I don't believe I knew that, no.</p> <p>9       Q. And is it fair to say that you've</p> <p>10 never seen her deposition transcript, if one</p> <p>11 exists?</p> <p>12      A. I have not seen it.</p> <p>13      Q. Did you ever ask to speak with the</p> <p>14 decision maker?</p> <p>15      A. No, I did not.</p> <p>16      Q. And is that because – why – why</p> <p>17 didn't you ask to speak with the decision maker?</p> <p>18      A. My assignment here was to talk about</p> <p>19 practice, you know, in the industry of using loans</p> <p>20 and other things. It was not to – I was not</p> <p>21 asked to assess these particular loans.</p> <p>22      So if the assignment had been to – to</p> <p>23 assess the reasonableness or fairness, then I</p> <p>24 certainly would have done other things, but that</p> <p>25 was not the assignment here.</p>	Page 100	Page 101

<p>1           ALAN JOHNSON</p> <p>2 the company to enter into a loan forgiveness</p> <p>3 program under the facts and circumstances that</p> <p>4 existed at the time, correct?</p> <p>5   A. That's right.</p> <p>6   Q. And you're not offering any opinion</p> <p>7 that the loan forgiveness program that Mr. Dondero</p> <p>8 entered into is consistent with industry</p> <p>9 standards, are you?</p> <p>10   A. No, I'm not.</p> <p>11   Q. Okay.</p> <p>12   What you are doing is you're – you're</p> <p>13 making an assessment of what comparable executives</p> <p>14 earn in the industry. Is that fair?</p> <p>15   A. That's part of it, and then the</p> <p>16 second, as I mentioned, just the use of such loans</p> <p>17 within the industry and, you know, within</p> <p>18 Highland.</p> <p>19   Q. Okay.</p> <p>20   But you're not offering any opinion as</p> <p>21 to whether or not – withdrawn.</p> <p>22   We'll keep going.</p> <p>23   You have no information about what</p> <p>24 diligence, if any, the decision maker conducted</p> <p>25 prior to entering into the agreement with</p>	Page 102	<p>1           ALAN JOHNSON</p> <p>2 Mr. Dondero in late 2018 or early 2019, correct?</p> <p>3   A. I do not.</p> <p>4   Q. And you're not offering any opinion as</p> <p>5 to whether or not the diligence that was done by</p> <p>6 that person was sufficient, correct?</p> <p>7   A. I'm not making that opinion, no.</p> <p>8   Q. And you don't have any information</p> <p>9 about the skill set or the experience of the</p> <p>10 decision maker, fair?</p> <p>11   A. I do not.</p> <p>12   Q. And you're not offering any opinion as</p> <p>13 to the skill set or the experience of the decision</p> <p>14 maker who entered into this alleged agreement on</p> <p>15 behalf of Highland, correct?</p> <p>16   A. I am not.</p> <p>17        MR. MORRIS: Let's go to page 3 of</p> <p>18 your report, please.</p> <p>19        So this is the introduction, right?</p> <p>20   So this is the very first substantive page</p> <p>21 of the report, is that right?</p> <p>22   A. Yes.</p> <p>23   Q. Okay.</p> <p>24        If you take a look near the end of the</p> <p>25 first paragraph, there's a sentence that reads,</p>	Page 103
<p>1           ALAN JOHNSON</p> <p>2 "Throughout this period, he received loans in lieu</p> <p>3 of additional current compensation."</p> <p>4   Do you see that?</p> <p>5   A. Yes.</p> <p>6   Q. Have I read that correctly?</p> <p>7   A. Yes.</p> <p>8   Q. Why did you include that sentence in</p> <p>9 your report?</p> <p>10   A. I – Mr. Dondero described these loans</p> <p>11 as – as a practice of, in lieu of paying</p> <p>12 compensation, these loans were – these loans were</p> <p>13 made.</p> <p>14   Q. What information were you given that</p> <p>15 you relied upon in order to make the statement</p> <p>16 that I just read into the record?</p> <p>17   A. Well, I interviewed Mr. Dondero, and</p> <p>18 then I talked to the four prior Highland</p> <p>19 executives.</p> <p>20   Q. Now, you told me that the four prior</p> <p>21 Highland executives described for you certain</p> <p>22 loans that they had received that had been</p> <p>23 forgiven in whole or in part by Highland.</p> <p>24   Do I have that right?</p> <p>25   A. Yes.</p>	Page 104	<p>1           ALAN JOHNSON</p> <p>2   Q. Did any of them give you any</p> <p>3 information to support the statement that</p> <p>4 throughout this period Mr. Dondero received loans</p> <p>5 in lieu of additional current compensation or is</p> <p>6 that information that came exclusively from</p> <p>7 Mr. Dondero?</p> <p>8   A. They described a practice at the</p> <p>9 company of using these loans as a – a form of</p> <p>10 deferred pay, so they described it – it was not</p> <p>11 only them, but it applied to others, and then when</p> <p>12 I interviewed Mr. Dondero, his testimony – his</p> <p>13 comments to me were consistent with that.</p> <p>14   Q. Okay.</p> <p>15        Did any of the four former employees</p> <p>16 specifically tell you that Mr. Dondero had ever</p> <p>17 received loans in lieu of additional current</p> <p>18 compensation or did they just describe a general</p> <p>19 practice that applied to others?</p> <p>20   A. I think they were describing the</p> <p>21 general practice.</p> <p>22   Q. Okay.</p> <p>23        So did anybody other than Mr. Dondero</p> <p>24 tell you that "Throughout this period, he received</p> <p>25 loans in lieu of additional current compensation"?</p>	Page 105